

BEFORE THE IOWA INSURANCE COMMISSIONER

IN THE MATTER OF)	Division Case No. 98904
)	
TRINA M. GOMEZ,)	FINDINGS OF FACT,
NPN 7237159,)	CONCLUSIONS OF LAW,
DOB 02/21/XXXX,)	AND FINAL ORDERS
)	
Respondent)	

DECISION

Respondent Trina M. Gomez' ("Gomez") resident insurance producer license is suspended for six months beginning on February 1, 2019 and ending on July 31, 2019 for fraudulent practices in obtaining commission income not owed to her and for failing to report a pending criminal prosecution to the Commissioner within thirty days. Gomez is prohibited from selling, soliciting, or negotiating insurance in the state of Iowa during her suspension, and from engaging in fraudulent or deceptive practices in the business of insurance. Gomez is also ordered to pay \$1000 in costs of the investigation and prosecution.

On October 1, 2018, the Iowa Insurance Division ("Division") filed a statement of charges against Gomez for two counts: engaging in a fraudulent practice and failing to timely report a criminal prosecution, 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 October 2, 2018 setting this matter for a prehearing conference on November 28, 2018 and for a hearing on December 6, 2018.

Following service of process on the Commissioner consistent with the consent to service of process in Gomez' insurance producer license application, the notice and statement of charges were sent to Gomez by mail on October 5, 2018. An entry of appearance by counsel and answer was thereafter filed.

The hearing was held on December 6, 2018 at 1:00 p.m. before Commissioner Douglas Ommen at the offices of the Iowa Insurance Division, Two Ruan Center, 601 Locust St., 4th Floor, Des Moines, Iowa. Gomez appeared in person and by counsel. The Division was represented by Compliance Attorney Lanny Zieman.

On December 5, 2018, the parties filed a joint stipulation of facts. At the hearing, the Division did not call any witnesses. The following exhibits were offered by the Division and received as evidence into the record:

1. Affidavit of Kayla Crow, dated 10/16/18;
 - 1-A Copy of NIPR's recorded Gomez Uniform Application for Individual Insurance Producer License sent via facsimile on 04/15/02;
 - 1-B Gomez's NIPR electronic licensing and appointments record as of submission on 10/15/18;
2. Plea of guilty memorandum filed in State v. Trina Marie Gomez, Case No.FECCR312867, Iowa District Court for Polk County, dated 07/02/18;
3. Sentencing order by Judge David May in State v. Trina Marie Gomez, Case No.FECCR312867, Iowa District Court for Polk County, dated 07/25/18;
4. Compact disc electronic recorded interview of Gomez on 07/05/18;
5. Investigator Hayden's interview memorandum of Gomez, dated 07/06/18;
6. Division's investigation and prosecution costs summary.

Gomez offered testimony on her own behalf at the hearing.

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. Trina M. Gomez (“Gomez”) is an individual resident of Iowa.

3. Gomez applied for a resident insurance producer license in Iowa by filing a Uniform Application for Individual Insurance Producer License (“Uniform Application”) on April 9, 2002 with the Division. In submitting the Uniform Application, Gomez designated the Commissioner as an agent for service of process.
4. The Division issued Gomez a license as an insurance producer on May 8, 2002 under National Producer Number 7237159.
5. Gomez applied for and received triennial renewals of her insurance producer license since 2002. Her license was last renewed on March 1, 2017, and is scheduled to expire on February 29, 2020.
6. Gomez is and has been licensed in the state of Iowa as a resident insurance producer continuously since May 8, 2002.
7. Pursuant to Iowa Code § 505.28, Gomez has consented to the jurisdiction of the Commissioner of Insurance by committing acts governed by Iowa Code Chapter 522B.
8. Gomez became employed in October of 2008 as a customer service representative and office manager by Adamson Insurance Agency (“Adamson Agency”). Adamson Agency was operated by Mike Adamson, an insurance producer.
9. Adamson Agency had three customer service representatives and Gomez was responsible for servicing customers with last names beginning with the letters “A” through “I.”
10. During her employment with Adamson Agency, Gomez was not agent of record for any insurance policies sold by Adamson Agency. Adamson was the agent of record.
11. Gomez and Adamson had a verbal agreement that Gomez would receive 50 percent of the commission amount received by Adamson Agency for writing “that piece of business.” Gomez

stated that all referral business that came into the office to the customer service representatives was subject to a “50-50” commission split.

12. The verbal agreement also included an agreement that Gomez would receive “100% of the commission” on a “case-by-case basis” from policies of “family” and “close friends.”

13. Each month Gomez submitted by document to an outside accounting firm the amount of commissions that were payable to her.

14. Gomez submitted documents to Adamson Agency’s outside accounting firm for 100% commissions on some policies to which she was not entitled.

15. Gomez’ rationale for this conduct was because she “had paid Mike his dues.”

16. During the period of December 2016 through October 2017, Gomez obtained by fraudulent practice commission income in the amount of \$1000 to which she was not entitled.

17. Upon discovery of this fraudulent practice, Adamson terminated the employment of Gomez on November 23, 2017.

18. On January 16, 2018, Gomez was charged and arrested in Iowa District Court for Polk County on the counts of Fraudulent Practice in the 1st Degree in violation of Iowa Code §714.9, a class D felony, and Theft in the 2nd Degree in violation of Iowa Code 714.2(2), also a class D felony.

19. On February 27, 2018, the State filed a Trial Information on the counts of Fraudulent Practice in the 1st Degree in violation of Iowa Code §714.9, a class D felony, and Theft in the 2nd Degree in violation of Iowa Code 714.2(2), also a class D felony.

20. On March 29, 2018, Gomez appeared in the Iowa District Court for Polk County at a prehearing conference.

21. As of April 30, 2018, Gomez had not notified the Commissioner of the pending criminal charges.

22. On July 2, 2018, Gomez entered a plea of guilty to the charge of Fraudulent Practice in the 3rd Degree in violation of Iowa Code § 714.11(1)(a), an aggravated misdemeanor.

23. On July 25, 2018, the Iowa District Court for Polk County entered a deferred judgment on Gomez for her plea of guilty.

24. An investigation of the Division was opened and assigned to Investigator Hayden. On July 5, 2018, Investigator Hayden conducted an interview of Gomez.

II. CONCLUSIONS OF LAW

COUNT ONE

Fraudulent Practice and Demonstrating Untrustworthiness

25. Under Iowa Code § 522B.11(1)(h), 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 Iowa Code § 522B.17 for using fraudulent, coercive, or dishonest practices or demonstrating incompetence or untrustworthiness.

26. 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).

27. "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).

28. The text of Iowa Code §522B.11(1)(h) makes clear that a fraudulent practice alone would authorize revocation, suspension, or refusal of an insurance producer’s license.

29. “Fraudulent practice” is not defined under Iowa Code §522B.11(1)(h), but we conclude it is not limited to common law fraud or deceit. Cf. *Grefe v. Ross*, 231 N.W.2d 863, 864 (Iowa 1975). We conclude that “fraudulent practices” under Iowa Code §522B.11(1)(h) would include a broad class of conduct involving any method or degree of deception, fraud, false pretense, false promise, misrepresentation, false or misleading statements, and any concealment, suppression or omission of material fact with the intent to mislead. As such, any “fraudulent practice” under Iowa Code §714.8 also constitutes a “fraudulent practice” under Iowa Code §522B.11(1)(h).

30. Gomez committed a fraudulent practice by submitting misleading information to her employer’s accounting firm for the purpose of receiving commission income to which Gomez was not entitled. This fraudulent practice is grounds for discipline under Iowa Code §522B.11(1)(h), subjecting Gomez to suspension of her resident insurance producer license.

31. While the fraudulent practice of Gomez may also demonstrate untrustworthiness, we choose to not address this claim.

32. Gomez was charged with Fraudulent Practice in the 1st degree under Iowa Code §§714.8 and 714.9, which allegedly involves obtaining by fraud an amount of money of more than \$10,000. Gomez was also charged with Theft in the 2nd degree under Iowa Code §§714.1 and 714.2, which allegedly involves theft of money of more than \$1000, but less than \$10,000.

However, the plea under her plea bargain was to Fraudulent Practice in the 3rd degree under Iowa Code §§714.8 and 714.11, which involves obtaining an amount of money between \$500 and \$1000.

33. The Division did not offer evidence of the actual amount of unlawfully obtained commissions, but stipulated to the \$500 to \$1000 amount that had been the legal basis for the plea bargain. During the hearing, her counsel stated that Gomez paid \$1000 and some additional amount to Adamson as restitution and accounting costs. Gomez did testify that she paid \$15,000 to Adamson, of which \$8000 was a “disputed amount.” Given the uncertainty in the evidence, we conclude that Gomez fraudulently obtained \$1000 in commission income to which she was not entitled.

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

35. The fraudulent practices of Gomez of submitting misleading documents to obtain from her employer commission income not owed to her subjects Gomez under Iowa Code §522B.11(1)(h) 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 §§505.8, 507B.7, 522B.11 and 522B.17, and Iowa Administrative Code rule 191—15.14.

COUNT TWO

Failure of a Producer to Report a Criminal Prosecution

36. Under Iowa Code §522B.11(1)(b), 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 for violating any insurance laws.

37. Iowa Code §522B.16 requires that within thirty days of the initial pretrial hearing date, a producer shall report to the Commissioner any criminal prosecution of the producer.

38. On January 16, 2018, Gomez was charged and arrested in Iowa District Court for Polk County on counts of Fraudulent Practice in the 1st Degree in violation of Iowa Code §714.9, a class D felony, and Theft in the 2nd Degree in violation of Iowa Code 714.2(2), also a class D felony.

39. On February 27, 2018, the State of Iowa filed a Trial Information on counts of Fraudulent Practice in the 1st Degree in violation of Iowa Code §714.9, a class D felony, and Theft in the 2nd Degree in violation of Iowa Code §714.2(2), also a class D felony.

40. On March 29, 2018, Gomez appeared at a prehearing conference.

41. As of April 30, 2018, Gomez had not notified the Commissioner of the pending criminal charges in violation of Iowa Code §522B.16.

42. The failure of Gomez to report the charges within thirty days are a violation of Iowa Code §522B.16, and as a violation of an insurance law subjects Gomez under Iowa Code §522B.11(1)(b) to probation, suspension, or revocation of her insurance producer license, the imposition of a civil penalty, an order requiring Gomez 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 §§505.8, 507B.7, 522B.11 and 522B.17, and Iowa Administrative Code rule 191—15.14.

RECOMMENDED DISCIPLINE

43. The Division recommended a six to twelve month suspension as discipline.
44. Gomez recommended a 180-day suspension as discipline.
45. Without a preponderance of evidence that Gomez fraudulently obtained commission payments in excess of \$1000, we see no basis to not follow the parties' mutual recommendation.

III. ORDERS

IT IS THEREFORE ORDERED that, pursuant to Iowa Code §522B.11, Gomez's resident insurance producer license is suspended for six months effective on February 1, 2019 through July 31, 2019.


IT IS FURTHER ORDERED that Gomez is prohibited from selling, soliciting, or negotiating insurance in the state of Iowa during her suspension.

IT IS FURTHER ORDERED that Gomez is prohibited from engaging in any fraudulent or deceptive practice, making any false or misleading representations in any document or record associated with commissions or fees to be paid, or knowingly receiving any commissions or fees not owed to her.

IT IS FURTHER ORDERED that Gomez shall pay the amount of \$1000 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.

SO ORDERED on this 16th day of January, 2019.



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, revocation 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 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

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 16, 2018.

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

Signature: Hilary Foster
Hilary Foster