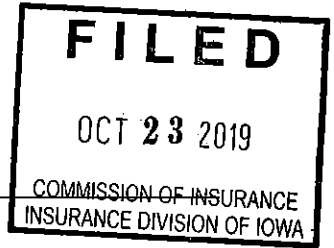


BEFORE THE IOWA INSURANCE COMMISSIONER



IN THE MATTER OF)	Division Case No. 96975
)	
MARK S. DIAMOND,)	FINDINGS OF FACT,
NPN 996343,)	CONCLUSIONS OF LAW AND
CRD 4557074)	ORDERS OF REVOCATION,
d/o/b: 10/04/xxxx,)	TO CEASE AND DESIST,
)	AND OTHER RELIEF
Respondent)	

DECISION

The insurance producer license of Mark S. Diamond (“Diamond”), national producer number (“NPN”) 996343, is revoked effective immediately because Diamond has made recommendations to Iowans to purchase annuities without having a reasonable basis to believe each transaction was suitable based upon the particular financial situation, insurance needs and financial objectives of each particular consumer; obtained consumer signatures as false attestations on “blank” suitability forms, annuity applications and 1035 exchange requests; made untrue and misleading statements concerning annual income, estimated net worth, liquid net worth, client instructions and other material information in those suitability forms, annuity applications and 1035 exchange requests; engaged in other unfair and deceptive acts and practices; provided incorrect, misleading, incomplete and materially untrue information in both his license application and his renewal license application; failed to timely report administrative actions by other states’ insurance regulators; had his insurance license revoked in Wisconsin; used fraudulent and dishonest practices; and demonstrated untrustworthiness.

On November 8, 2018, the Iowa Insurance Division (“Division”) submitted a statement of charges against Diamond for alleged violations of Iowa Code Chapters 507B and 522B. An

amended statement of charges was filed on March 13, 2019. Diamond filed his answer to the amended statement of charges on April 3, 2019. The Commissioner presided over a two day hearing on June 17 – 18, 2019 at the offices of the Iowa Insurance Division, Two Ruan Center, 601 Locust St., 4th Floor, Des Moines, Iowa. Diamond was present and was represented by attorney Brent D. Rosenberg of Des Moines, Iowa. Diamond was also represented by attorney Richard Dean Farkas of Sherman Oaks, California, who appeared *pro hac vice*. The Iowa Insurance Division was represented by compliance attorneys with the Enforcement Bureau, Lanny Zieman and John Leonhart.

At the hearing, after the Commissioner provided instruction to the parties on procedural matters, evidence was received. At the hearing, the following witnesses appeared on behalf of the Division and were examined: Craig Hayden, a former Iowa Insurance Division Compliance Investigator; Mrs. F ■■■ V ■■■■■; Mrs. J ■■■ S ■■■; Mr. R ■■■ W ■■■; the Respondent Mark Diamond; Mr. M ■■■ G ■■■; and Ms. Kayla Crow, an Iowa Insurance Division Producer Licensing Coordinator; and the Division submitted documentary evidence. Diamond called Ms. Carrie Guetschow as a witness and submitted documentary evidence.

NOW THEREFORE, after reviewing the pleadings submitted in the case and the evidence received, we issue the following findings of fact, conclusions of law and orders:

I. FINDINGS OF FACT

1. The Commissioner of Insurance, Douglas Ommen, directly and through his designees, administers and enforces Iowa Code Chapter 507B—Iowa Trade Practices and Iowa Code

Chapter 522B—Licensing of Insurance Producers pursuant to Iowa Code § 505.8. (Statement of Charges (“SOC”) ¶1; Answer ¶1)

2. Mark S. Diamond (“Diamond”) is an individual with a last-known residence address of 8275 E. Wood Drive, Scottsdale, AZ 85260. (SOC ¶2; Answer ¶2, Tr. 9-11, 395; Ex. 1, 2 & 3)

3. Diamond has been licensed in the state of Iowa as a nonresident insurance producer since August 7, 2014. He is licensed under National Producer Number 996343. (SOC ¶3; Answer ¶3; Tr. 9-11, 395; Ex. 1, 2 & 3).

4. Pursuant to Iowa Code § 505.28, Diamond has consented to the jurisdiction of the Commissioner of Insurance by committing acts governed by Iowa Code Chapters 507B and 522B. (SOC ¶4; Answer ¶4).

A. The 2014 Uniform Application

5. On August 6, 2014, Diamond applied for a non-resident insurance producer license with the Division by submitting through the National Insurance Producer Registry a Uniform Application for Individual Producer License (“2014 Uniform Application”). (SOC ¶9; Answer ¶9; Tr. 9-11, 395; Ex. 1).

6. In submitting the 2014 Uniform Application, Diamond designated the Commissioner as an agent for service of process. (SOC ¶9; Answer ¶9; Tr. 9-11, 395; Ex. 1).

7. Question 2 of the 2014 Uniform Application asked the following question:

Have you ever been named or involved as a party in an administrative proceeding, including a FINRA sanction or arbitration proceeding regarding any professional or occupational license or registration? “Involved” means having a license censured, suspended, revoked, canceled, terminated, being assessed a fine, a cease and desist order, a prohibition order, a compliance order, placed on probation, sanctioned or surrendering a license to resolve an administrative action. “Involved” also means being named in an administrative or arbitration proceeding, which is related to a professional or occupational license, or registration. “Involved” also means having a license, or registration application denied or the act of withdrawing an application to avoid a denial. INCLUDE any

actions in your capacity as an owner, partner, or director, or member or manager of a Limited Liability Company. You may EXCLUDE terminations due solely to noncompliance with continuing education requirements or failure to pay a renewal fee. If you answer yes, you must attach to this application: (a) a written statement identifying the type of license and explaining the circumstances of each incident, (b) a copy of the Notice of Hearing or other document that states the charges or allegations, and (c) a copy of the official documents, which demonstrates the resolution of the charges or any final judgment.

(Tr. 9-11, 395; Ex. 1).

8. Diamond authorized an employee, Carrie Guetschow, (“Guetschow”) to answer “Yes” to Question 2 of the 2014 Uniform Application. (Tr. 9-11, 395; Ex. 1).

9. On November 30, 2000, Diamond entered into a Voluntary Settlement Agreement with the Division for engaging in the business of insurance in Iowa without being licensed as a nonresident insurance producer. (“2000 Iowa Voluntary Settlement”) Diamond paid a \$6,000 civil penalty and \$4,000 for investigation costs. (SOC ¶6; Answer ¶6; Tr. 10-11, 395; Ex. 1, 2, and 3).

10. We find that the 2000 Iowa Voluntary Settlement was appropriately reported in the 2014 Uniform Application.

11. Question 5 of the 2014 Uniform Application asked the following question:

Are you currently party to, or have you ever been found liable in, any lawsuit, arbitrations or mediation proceeding involving allegations of misappropriation or conversion of funds, misrepresentation or breach of fiduciary duty? If you answer yes, you must attach to this application: (a) a written statement summarizing the details of each incident, (b) a copy of the Petition, Complaint or other document that commenced the lawsuit, arbitration, or mediation proceedings, and (c) a copy of official documents, which demonstrates the resolution of the charges or any final judgment.

(SOC ¶9; Answer ¶9; Tr. 9-11, 395, 418-419; Ex. 1).

12. We find that Diamond authorized Guetschow to answer “No” to Question 5 of the 2014 Uniform Application. (SOC ¶9; Answer ¶9; Tr. 9-11, 241, 395, 418-419; Ex. 1).

13. We find that Diamond's answer of "No" to Question 5 of the 2014 Uniform Application provided incorrect, misleading, incomplete, and materially untrue information because on February 14, 2012, the United States and the state of Colorado had filed a complaint for injunctive and other relief in the United States District Court for the District of Colorado against Bella Homes, LLC, Diamond and three other individuals alleging a fraudulent scheme victimizing distressed homeowners across the United States in violation of federal and state law ("2012 Federal Complaint") (Civil Action No. 12-cv-00390-JLK-MEH). (SOC ¶7, Answer ¶7, Tr. 10-11, 241, 243, 410-411, 418-419, Exhibits 4, 4F, 7, H).

14. We find that Diamond's answer of "No" to Question 5 of the 2014 Uniform Application provided incorrect, misleading, incomplete, and materially untrue information because on March 20, 2012, Diamond consented to the entry of a stipulated consent judgment and permanent injunction ("2012 Federal Injunction") by United States District Judge John L. Kane against Diamond and the four other defendants and an additional "relief defendant." (Civil Action No. 12-cv-00390-JLK-MEH. (SOC ¶8, Answer ¶8, Tr. 10-11, 241, 243, 410-411, 418-419, Exhibits 4, 4F, 8, H).

15. We find that Diamond's answer of "No" to Question 5 of the 2014 Uniform Application provided incorrect, misleading, incomplete, and materially untrue information because Diamond in the 2012 Federal Injunction confessed to violations of the Mortgage Assistance Relief Services Rule found in 16 C.F.R Part 322.

16. We find that Diamond's answer of "No" to Question 5 of the 2014 Uniform Application provided incorrect, misleading, incomplete, and materially untrue information because Diamond in the 2012 Federal Injunction confessed to violating the Mortgage Assistance Relief Services Rule in Count Six of the Federal Complaint "by making a representation, expressly or by implication,

about the benefits, performance, or efficacy of any mortgage assistance relief service with competent and reliable evidence that substantiates the representation is true.” (Ex. 7 – pg. 46, Ex. 8 – pg. 2).

17. We find that Diamond’s answer of “No” to Question 5 of the 2014 Uniform Application provided incorrect, misleading, incomplete, and materially untrue information because Diamond in the 2012 Federal Injunction confessed to violating the Mortgage Assistance Relief Services Rule in Count Seven of the Federal Complaint by requesting or receiving:

...payment of any fee or other consideration until the consumer has executed a written agreement between the consumer and the consumer’s dwelling loan holder or servicer incorporating the offer of mortgage assistance relief the provider obtained from the consumer’s dwelling loan holder or servicer.

(Ex. 7 – pg. 47, Ex. 8 – pg. 2).

18. We find that Diamond’s answer of “No” to Question 5 of the 2014 Uniform Application provided incorrect, misleading, incomplete, and materially untrue information because Diamond in the 2012 Federal Injunction consented to:

[A] final judgment, as a debt for a fine, penalty, or forfeiture, payable to and for the benefit of a governmental unit, and not compensation for actual pecuniary loss, for five hundred thousand dollars (\$500,000), which shall be suspended and which the Government agrees not to enforce unless and until Defendant Mark Stephen Diamond violates any of the injunctive provisions above or the payment obligations below in paragraphs 11 and 12(a).

19. We find that Diamond’s answer of “No” to Question 5 of the 2014 Uniform Application provided incorrect, misleading, incomplete, and materially untrue information because paragraph 12(a) of the 2012 Federal Injunction imposed an monetary obligation on Diamond:

For the payment obligation of \$497,500 described in paragraph 10, \$197,500 will be paid (not jointly and severally) to the Colorado Department of Law as follows:

(a) Mark S. Diamond: \$150,000

20. The 2014 Uniform Application represents that it was submitted by Diamond, as the “producer,” and further bears the following attestation:

I hereby certify that, under penalty of perjury, all of the information submitted in this application and attachments is true and complete. I am aware that submitting false information or omitting pertinent or material information in connection with this application is grounds for license revocation or denial of the license and may subject me to civil or criminal penalties.

(Emphasis added.) (SOC ¶9; Answer ¶9; Tr. 9-11, 395-396; Ex. 1).

21. We do not find Diamond to be credible in his testimony on this issue. Despite a leading question by his own counsel on this important issue directly related to a charge and his truthfulness and completeness under penalty of perjury, Diamond’s demeanor and choice of words conveyed that of a smooth talking salesman, who believed he could talk his way out of his circumstance by minimizing the unlawful behavior and describing it as “a mistake”:

Diamond’s Attorney: Did you enter a stipulated consent agreement with the United States and the State of Colorado on March 20, 2012?

Diamond: Yes

Diamond’s Attorney: Is Exhibit 8 a copy of that?

Diamond: Yes

Diamond’s Attorney: Did you report this action to the Division on your original non-resident license application when you applied here on August 6, 2014?

Diamond: I don’t believe so.

Diamond’s Attorney: Why not?

Diamond: I didn’t feel it was industry related and it – on what date was that again? On the – 2014?

Diamond’s Attorney: Correct.

Diamond: It would have been two years old, not industry related, which is not a requirement in my state of Arizona, and I made a mistake and it should have been reported here.

(Tr. 241-242)

22. Diamond's assertion of "a mistake" is patently absurd for an insurance producer with 27 years of experience and who writes business in multiple jurisdictions. (Tr. 238). A plain reading of Question 5 of the 2014 Uniform Application is clear that the question is not limited to "industry related." We give this cavalier assertion by Diamond no credibility and find his claimed rationale for not disclosing the 2012 Federal Complaint and 2012 Federal Injunction in his license application to be a fabrication.

23. Diamond's own employee, Guetschow, was also not credible, and unwittingly contradicted him. Guetschow in her testimony sought to absolve Diamond of the very mistake that he testified he had made. Guetschow suggested she believed that Question 5 of the 2014 Uniform Application was limited to "industry related things." But she also testified that she did not even discuss Question 5 of the 2014 Uniform Application with Diamond before submitting the 2014 Uniform Application, which would contradict Diamond's confession of a "mistake." Further, Guetschow's statements are an admission that she submitted the 2014 Uniform Application was over a false attestation. (Tr. 419). We find no credibility in Guetschow's testimony that she mistakenly read Question 5 of the 2014 Uniform Application to be limited to "industry related things," but we do find her admission that she dishonestly affixed Diamond's signature below the 2014 Uniform Application attestation to be believable as an admission.

24. We further find that whether or not Diamond was actually consulted on the particulars of the answers, he knowingly and recklessly authorized Guetschow to answer "No" to Question 5 of the 2014 Uniform Application. We find that Diamond knowingly authorized Guetschow to

apply Diamond's signature to the 2014 Uniform Application to falsely attest to the accuracy of answers in the 2014 Uniform Application.

25. We find that Diamond's knowing authorization to Guetschow to apply Diamond's signature and to falsely attest under penalty of perjury to the accuracy and completeness of answers in the 2014 Uniform Application provided incorrect, misleading, incomplete, and materially untrue information in the application.

26. We further find that Diamond's testimony and other evidence offered concerning his claimed limited involvement or culpability in the underlying allegations of the 2012 Federal Complaint or the judgment terms in 2012 Federal Injunction, which Diamond offered to minimize the federal and state action, to be entirely irrelevant as to whether Diamond provided incorrect, misleading, incomplete, and materially untrue information in his 2014 Uniform Application. (Tr. 309-321). Any of these facts and circumstances may have been appropriately considered by the Division back in 2014 upon consideration of a truthful and complete 2014 Uniform Application when filed, but not five years after the fact at a hearing before the Commissioner on the question whether the application was untruthful and incomplete. As such, we give this irrelevant evidence very little consideration.

27. On August 7, 2014, the Division issued Diamond a license as a non-resident insurance producer and assigned to him National Producer Number 996343.

B. 2016 Uniform Renewal Application

28. On September 30, 2016, Diamond filed to renew his resident insurance producer license with the Division, by submitting an application for renewal through the National Insurer Producer Registry a Uniform Application for Non-resident Renewal ("2016 Uniform Renewal Application"). (SOC ¶13; Answer ¶13; Tr. 9-11, 395; Ex. 2).

29. In submitting the 2016 Uniform Renewal Application, Diamond renewed his designation of the Commissioner as an agent for service of process. (SOC ¶13; Answer ¶13; Tr. 9-11, 395; Ex. 2).

30. Question 2 of the 2016 Uniform Renewal Application asked the following question:

Have you ever been named or involved as a party in an administrative proceeding, including a FINRA sanction or arbitration proceeding regarding any professional or occupational license or registration, which has not been previously reported to this insurance department? "Involved" means having a license censured, suspended, revoked, canceled, terminated, being assessed a fine, a cease and desist order, a prohibition order, a compliance order, placed on probation, sanctioned or surrendering a license to resolve an administrative action. "Involved" also means being named in an administrative or arbitration proceeding, which is related to a professional or occupational license, or registration. "Involved" also means having a license, or registration application denied or the act of withdrawing an application to avoid a denial. INCLUDE any business so named because of your actions in your capacity as an owner, partner, or director, or member or manager of a Limited Liability Company. You may EXCLUDE terminations due solely to noncompliance with continuing education requirements or failure to pay a renewal fee. If you answer yes, you must attach to this application: (a) a written statement identifying the type of license and explaining the circumstances of each incident, (b) a copy of the Notice of Hearing or other document that states the charges or allegations, and (c) a copy of the official documents, which demonstrates the resolution of the charges or any final judgment.

(Tr. 9-11, 395; Ex. 2).

31. Diamond authorized Guetschow to answer "No" to Question 2 of the 2016 Uniform Renewal Application. (Tr. 9-11, 242, 395-396, 420; Ex. 2).

32. We find that Diamond's answer of "No" to Question 2 of the 2016 Uniform Renewal Application provided incorrect, misleading, incomplete, and materially untrue information because on September 29, 2014, Diamond and his company, Diamond and Associates Retirement Planning Services, Inc., entered into a Consent Agreement and Final Order with the Office of the Commissioner of Securities and Insurance, Montana State Auditor ("2014 Montana Order"). (SOC ¶12, Answer ¶12, Tr. 10-11, 242-243, 399-400, 419, Exhibits 4, 4B, 9, H).

33. We find that Diamond's answer of "No" to Question 2 of the 2016 Uniform Renewal Application provided incorrect, misleading, incomplete, and materially untrue information because the 2014 Montana Order required Diamond pay a fine of \$15,000 and to not renew his insurance producer's license or conduct any insurance or securities business in Montana. (SOC ¶12, Answer ¶12, Tr. 10-11, 242-243, 399-400, 419, Exhibits 4B, 9, H).

34. The 2014 Montana Order was not reported to the Division until August 2, 2017. (Tr. 10-11, 399-400, Exhibits 4, 4B)

35. The 2016 Uniform Renewal Application represents that it was submitted by Diamond, as the "producer," and bears the following attestation:

I hereby certify that, under penalty of perjury, all of the information submitted in this application and attachments is true and complete. I am aware that submitting false information or omitting pertinent or material information in connection with this application is grounds for license revocation or denial of the license and may subject me to civil or criminal penalties.

(Emphasis added.) (SOC ¶12; Answer ¶12; Tr. 9-11, 395-396; Ex. 2).

36. As with his immediately preceding explanation about the 2014 Uniform Application, we find Diamond's testimony concerning the 2016 Uniform Renewal Application casts a long shadow of doubt on his fitness to hold an Iowa insurance producer license and does nothing to provide a defense to the charges. The following exchange with his attorney exemplifies his disregard for the license application process and the attestation requirement:

Diamond's Attorney: Okay. Did you enter a consent agreement with the Montana Commissioner of Securities and Insurance on September 29, 2014?

Diamond: What exhibit is that?

Diamond's Attorney: Exhibit 9.

Diamond: 9? Yes, I did.

Diamond's Attorney: Did you report this action to the Division within 30 days of it being entered?

Diamond: Not within 30 days.

Diamond's Attorney: Did you report this action to the Division on your nonresident renewal application on September 20, 2016?

Diamond: I am not aware of that.

Diamond's Attorney: Should you have reported that to the Division?

Diamond: I was not aware of it not reported until I found out it was not reported.

Diamond's Attorney: But it should have been reported, correct?

Diamond: Yes.

(Tr. 242-243).

37. We find Diamond's explanation that "I was not aware of it not reported until I found out it was not reported" to be appalling especially in light of the required attestation under penalty of perjury to be truthful and complete in his 2016 Uniform Renewal Application.

38. Once again, Diamond's office manager, Guetschow, sought to relieve Diamond of any responsibility for the wrongful license renewal conduct in 2016. As she works for Diamond and is clearly self interested in helping Diamond keep his insurance licenses, we find her testimony to be biased and lacking credibility. Guetschow offered the following explanation:

Diamond's Attorney: And if you can find it, there's a 4E there. I can help you find it if you can't.

Guetschow: Okay. [The witness reviewed Exhibit 4E, which is Diamond's Explanation of the 2014 Montana Order and a subsequent Nebraska order.]

Diamond's Attorney: Take a look at that. Hang on. I'm sorry. Back to Division's Exhibit 2 [2016 Uniform Renewal Application]. I'll have you look at paragraph 2 there.

Guetschow: Okay.

Diamond's Attorney: What was your role in connection with creation of this applicant – application?

Guetschow: I processed the license renewal for this application.

Diamond's Attorney: And did you submit it?

Guetschow: I did.

Diamond's Attorney: And take a look at Question No. 2?

Guetschow: Uh-huh. Again, I felt this related to industry only.

Diamond's Attorney: The answer was "No"; is that correct?

Guetschow: That is correct.

Diamond's Attorney: Did you also interpret this to mean anything that wasn't already reported?

Guetschow: Yes.

Diamond's Attorney: Did you discuss this answer with Mark Diamond before you filed it?

Guetschow: I did not.

(Tr. 419-420).

39. Despite the best efforts of counsel with leading questions to keep her testimony coherent, Guetschow, when discussing the 2014 Montana Order, a state insurance licensing enforcement action, answered "Uh-huh. Again, I felt this related to industry only." Clearly, the 2014 Montana Order is industry related.

40. We do find Guetschow's statements to be an admission that she dishonestly affixed Diamond's signature below the attestation falsely attesting to the truthfulness and completeness of the answers in 2014 Uniform Renewal Application.

41. We further find that whether or not Diamond was actually consulted on the particulars of the answers, he knowingly and recklessly authorized Guetschow to answer “No” to Question 2 of the 2016 Uniform Renewal Application. We find that Diamond knowingly authorized Guetschow to apply Diamond’s signature to the 2016 Uniform Renewal Application to falsely attest to the accuracy of answers in the 2016 Uniform Renewal Application.

42. We find that Diamond’s knowing authorization to Guetschow to apply Diamond’s signature and to falsely attest under penalty of perjury to the accuracy and completeness of answers in the 2016 Uniform Renewal Application provided incorrect, misleading, incomplete, and materially untrue information in the application.

C. Failure to Timely Report the 2017 Nebraska Order to the Division

43. On February 23, 2017, the Nebraska Director of Insurance, Bruce Ramage, issued an order adopting the Findings of Fact, Conclusions of Law and Recommended Order (“2017 Nebraska Order”) of an hearing officer, who concluded that:

- (a) Diamond violated Neb. Rev. Stat § 44-4065 when he failed to report the 2012 Federal Complaint;
- (b) Diamond violated Neb. Rev. Stat § 44-4059(1)(h) by partnering with someone previously convicted of fraud showing irresponsibility in business; and
- (c) Diamond violated Neb. Rev. Stat § 44-4059(1)(g) by entering a consent order and admitting liability to a count that included fraud.

(SOC ¶15, Answer ¶15, Tr. 10-11, 243, 399-400, 419, Exhibits 4, 4A, 10, H).

44. Diamond was ordered to pay an administrative fine of \$2,500. (SOC ¶15, Answer ¶15, Tr. 10-11, 243, 399-400, 419, Exhibits 4, 4A, 10, H).

45. Diamond reported the 2017 Nebraska Order to the Division on August 2, 2017, or 160 days after entry of the order. (SOC ¶15, Answer ¶15, Tr. 10-11, 243, 399-400, 419, Exhibits 4, 4A, 10, H).

D. Failure to Timely Report the 2018 California Order to the Division

46. On June 15, 2018, the California Insurance Commissioner Dave Jones issued a Revocation of Unrestricted License and For Issuance of Restricted License (“2018 California Order”) following a stipulation and waiver on June 6, 2018, by Diamond and the California Department of Insurance. (SOC ¶16, Answer ¶16, Tr. 10-11, 245-246, 397-402, 410-412, Exhibits 4, 11, H).

47. The Division did not receive from Diamond a timely report of the 2018 California Order within 30 days of June 15, 2018. (Tr. 245-246, 397-402; Ex. 4, 11).

E. Revocation of Wisconsin Insurance License in 2018 Wisconsin Decision, and Failure to Timely Report the Decision to the Division

48. On November 26, 2018, the Wisconsin Commissioner of Insurance Theodore K. Nickel issued a Final Decision against Diamond (“2018 Wisconsin Decision”) adopting the proposed decision of an administrative law judge. (SOC ¶18, Answer ¶18, Tr. 10-11, 246-249, 397-402, 410-412, Exhibits 4, 12, H).

49. Commissioner Nickel in his 2018 Wisconsin Decision and the adopted findings of fact and conclusions of law found numerous violations of Wisconsin insurance laws and regulations, including the following violations:

- (a) Diamond violated Wis. Admin. Code § Ins 6.61(a) by not timely reporting to Wisconsin the administrative actions by Iowa, Montana and Nebraska;
- (b) Diamond violated Wis. Stat. § 628.34(1)(a) and Wis. Admin. Code § Ins 2.16(5)(a) by misleading Wisconsin consumers by implication and omission in advertising a free retirement workshop with the true purpose of inducing potential insurance customers;
- (c) Diamond violated Wis. Stat. §§ 628.347(2)(a) and (2)(a)(4)a. in making the recommendation to a Wisconsin married couple that they withdraw from a Voya variable annuity and purchase a Forethought fixed annuity without

having a reasonable basis to believe this recommendation was suitable for the couple.

(Ex. 12).

50. Commissioner Nickel in the 2018 Wisconsin Decision ordered the following relief:

- (a) Diamond was ordered to pay within 30 days of the order restitution in the amount of \$130,021.12 to the Wisconsin couple;
- (b) Diamond was ordered to forfeit within 30 days of the order \$3,000 to the state of Wisconsin;
- (c) Diamond was ordered to forfeit within six months of the order \$144,746.56 to the state of Wisconsin.
- (d) Diamond's non-resident insurance intermediary licensed was revoked.

(Ex. 12).

51. The Division did not receive from Diamond a timely report of the 2018 Wisconsin Decision within 30 days of November 26, 2018. (Tr. 245-246, 397-402; Ex. 4).

F. Diamond's Insurance Solicitations in Iowa and General Suitability Basis

52. The issuance of a non-resident producer license by the Division on August 7, 2014 was not Diamond's first time transacting the business of insurance in Iowa. Diamond was soliciting and selling annuities in the state in the year of 2000. At that time he was investigated for sales practices. On November 30, 2000, Diamond entered into a voluntary settlement agreement with the Division for engaging in the business of insurance in Iowa without being licensed as a nonresident insurance producer. ("2000 Iowa Voluntary Settlement"). (SOC ¶6; Answer ¶6; Tr. 10-11, 395; Ex. 1, 2, 3, 4F, 4G).

53. Diamond paid a \$6,000 civil penalty and \$4,000 for investigation costs under the 2000 Iowa Voluntary Settlement to resolve the investigation. (SOC ¶6; Answer ¶6; Tr. 10-11, 395; Ex. 1, 2, 3, 4F, 4G).

54. Diamond was again investigated by the Division for the conduct that gave rise to this action. (Tr. 37-38) Diamond's marketing strategy for selling annuities during 2014 - 2017 included offering free lunch and dinner "seminars." (Tr. 238; Ex.) At least since securing an insurance producer license in Iowa in 2014, Diamond has traveled from Scottsdale, Arizona to "a majority" of the cities of Iowa and offered "dozens" of "seminars." The locations of his "seminars" have included Des Moines, Webster City, Fort Dodge, Davenport and Waterloo. (SOC ¶27; Answer ¶27; Tr. 238-239).

55. Diamond agreed with his counsel in response to a leading question that "in connection with your [Diamond's] offer of trusts," Diamond was "actually engaged in conversations with these people regarding the benefits of trusts versus wills[.]" (Tr. 333).

56. Diamond also agreed with his attorney in response to leading questions that might relate to suitability, as follows:

Diamond's Attorney: Talk (inaudible) a little bit about suitability in general.
When you do your seminars, is it fair to say the primary purpose of the seminar is to educate the participants with regard to how to structure their estate so they are protected from Medicare [sic] buy-down?

Diamond: That's – that's the seminar that I give, yes.

Diamond's Attorney: Is that the principal purpose?

Diamond: That's – that's the principal purpose.

(Tr. 333).

57. First, we generally give much less weight to testimony by an insurance producer who is simply agreeing with statements by his own counsel on areas of supposed insurance producer expertise. However, we do find that Diamond employed a practice of using "seminars" where he sought to persuade those in attendance – including those who Diamond hoped would sign up

as sales prospects – to focus on a single consideration, in disregard of many other important factors related to the consumer’s financial situation, insurance needs and financial objectives. We find Diamond’s free lunch and dinner promotion “seminars” and his single purpose effort to create this financial “objective” in the minds of consumers; created a substantial risk that the accuracy of any expression – especially by older Iowans – of objectives that would follow to be likely compromised.

58. We also find that Diamond’s responses to his counsel’s questions demonstrated a lack of knowledge or attention to the very core basis of Diamond’s claimed expertise. Diamond testified the “principal purpose” of his seminars was “**Medicare** buy-down.” (Emphasis added.) (Tr. 333).

59. After referencing one of his “seminar” “handouts,” Diamond offered in his testimony rambling observations related to Medicaid. (Tr. 334-340; Ex. F). He offered no genuine application of actual Medicaid eligibility requirements to the particular circumstances of the customers who came forward to testify in this matter.

60. While confusing and rambling, Diamond’s own testimony does again make apparent the actual purpose of his free lunch and dinner “seminars” :

So our job at that point is to divest them and put everything in the control of the spouse at home and then buy a Medicaid – compliant annuity, SPIA [single premium immediate annuity], or turn their existing annuity into a SPIA. Generally, we take everything they both have and purchase something that Mom’s in control of.

(Emphasis added.) (Tr. 338-339). We find that Diamond’s own testimony reveals that the actual central purpose of his “seminar” is to promote this single purpose, irrespective of the particular circumstances of the listener, to pass it off as expertise, and then to persuade attendees that this idea should be their primary objective. He then plans to sign up the attendees of his “seminars”

for in home sales presentations where he recommends to prospective customers the purchase of an annuity that he claims would fulfill this purpose. We find that Diamond's free lunch and dinner "seminars" in Iowa had a tendency to achieve precisely that result. (Tr. 334-340; Ex. F). We further find that Diamond was likely persuasive with many older Iowans because he would talk very fast and very forcefully at the "seminars." In the words of two witnesses, he could be an aggressive, forceful "salesman." (Tr. 157, 377; Ex. 27).

61. Although it was central to his annuity sales pitch, Diamond did not demonstrate expertise of actual Medicaid eligibility "spenddown" strategies for long term support and services. He offered only vague reference to the relevance of a single premium immediate annuity to the topic and offered no substantive personal knowledge concerning Iowa's regulations on Medicaid eligibility found in 441 Iowa Administrative Code, Chapter 75. (Tr. 334-340; Ex. F).

62. Near the conclusion of the "seminars," Diamond collected contact information on a "Seminar Evaluation Form" from those Iowans in attendance. (Tr. 149, 385-386; Ex. A, B, C, D, E).

G. Insurance Company Appointments and Supervision

63. Diamond was appointed on September 11, 2014 by National Western Life Insurance Company ("National Western") to sell insurance policies in Iowa. (SOC ¶26; Answer ¶26; Tr. 10-11; Ex. 3).

64. Diamond was appointed on July 13, 2016 by American National Insurance Company ("American National") to sell insurance policies in Iowa. (SOC ¶26; Answer ¶26; Tr. 10-11; Ex. 3).

65. Diamond was appointed on October 27, 2016 by Athene Annuity and Life Company ("Athene") to sell insurance policies in Iowa. (SOC ¶26; Answer ¶26; Tr. 10-11; Ex. 3).

H. R. [REDACTED] and C. [REDACTED] W. [REDACTED]

66. R. [REDACTED] and C. [REDACTED] W. [REDACTED] are married and are currently living in Waterloo, Iowa. Mr. and Mrs. W. [REDACTED] are retired and both are now 87 years old. They have been married for 69 years. (Tr. 196).

67. Mr. and Mrs. W. [REDACTED] were farmers early in their marriage. In 1966, following seminary, Mr. and Mrs. W. [REDACTED] began serving in church ministry. They retired from church ministry in 2001. (Tr. 196-197; Ex. 14, 16).

68. Mr. and Mrs. W. [REDACTED] are inexperienced in investments and annuities. (Tr. 47, 197; Ex. 13).

69. Mr. and Mrs. W. [REDACTED] attended one of Diamond's free lunch "seminars" at the Elks Lodge in Waterloo, Iowa on April 7, 2015. (Tr. 197-198; Ex. 13, B). There were approximately 50 people in attendance. (Ex. 13).

70. During the "seminar," Diamond sought to persuade Mr. and Mrs. W. [REDACTED] that they should adopt Diamond's priority to protect "life savings from loss due to catastrophic illness or an extended stay in a nursing home." (Tr. 224, 256, 301-302, 338-339; Ex. 13). Diamond represented that a "fixed annuity that – would be safe as far as health care and so forth." (Ex. 13).

71. Neither Mr. W. [REDACTED] testimony, nor his statement to the Division's investigator on August 23, 2017, exhibited any substantive understanding of claims by Diamond that an American National annuity would protect "life savings from loss due to catastrophic illness or an extended stay in a nursing home." (224, 256, 301-302, 338-339; Ex. 13).

72. Despite Mr. W█████ testimony and prior statements, Diamond in his testimony claimed that Mr. W█████' primary concern was "most of all, to protect from nursing home." We find no credibility in this testimony. (Tr. 273).

73. Before leaving the "seminar," Mr. and Mrs. W█████ completed a "Seminar Evaluation Form." Diamond then scheduled a visit at their home for 3:30 p.m. on April 17, 2015. (SOC ¶30; Answer ¶30; Tr. 197-198; Ex. 13, B).

74. Diamond went to the W█████ home in Waterloo, Iowa on April 17, 2015 with the intent to sell annuities to Mr. and Mrs. W█████. Diamond's sales presentation lasted between one to two hours. (Tr. 209).

75. On April 17, 2015, Mr. W█████ was 82 years old and Mrs. W█████ was 83 years old. (SOC ¶31; Answer ¶31; Tr. 199).

76. Mr. and Mrs. W█████ had "inherited some money" and had funds that had accumulated in a "denominational pension," which was a defined contribution plan with The Brethren Church in Ashland, Ohio. (Tr. 197; Ex. B).

77. Mr. and Mrs. W█████ in April 2015 held the following assets with these respective values attributed by Mr. W█████:

<u>Asset</u>	<u>Value (\$)</u>
Wells Fargo annuity	41,813
Wells Fargo mutual fund	49,989
Stifel Nicolaus securities account	29,976
John Hancock annuity	38,582
IRA – Mr. W█████	5,008
IRA – Mrs. W█████	1,175
Brethren Retirement	105,108
Bank checking	15,299

(Tr. 200-202; Ex. 13, 43).

78. Mr. W [REDACTED] testified the actual net worth of Mr. and Mrs. W [REDACTED] in April 2015, excluding their primary residence, furnishings and automobiles, and before the purchase of any annuities recommended by Diamond, to be \$286,951. (Tr. 202; Ex. 43).

79. Mr. and Mrs. W [REDACTED] in 2015 received \$24,696 in benefits from social security, \$6,275.17 from The Brethren retirement plan, \$323.10 from Mr. W [REDACTED] IRA and \$75.30 from Mrs. W [REDACTED] IRA. (Tr. 211, 430; Ex. 43). The total annual income for Mr. and Mrs. W [REDACTED] in 2015 was \$31,369.57. (Tr. 211; Ex. 43).

(1) The Fargo, Stifel and Hancock Securities Liquidation Transaction

80. During the sales presentation in the W [REDACTED] home on April 17, 2015, Diamond recommended that Mr. and Mrs. W [REDACTED] pay \$120,000 in premium to purchase an individual annuity issued by National Western. (Tr. 196-230, Ex. 16, B). The National Western annuity was named "Protector One."

81. During the sales presentation in the W [REDACTED] home on April 17, 2015, Diamond persuaded Mr. and Mrs. W [REDACTED] to sign a "blank" National Western annuity suitability questionnaire. (Tr. 260-261, Ex. 13, 17). The National Western annuity suitability questionnaire contained none of the W [REDACTED] suitability information when signed by Mr. and Mrs. W [REDACTED]. (Tr. 260-261, Ex. 17).

82. The "Owner/Applicant Certification" on the National Western annuity suitability questionnaire included the following attestation:

*Please note: In the instance of joint spousal ownership, both spouses must initial and sign below.

By initialing beside each statement and signing below, I/we certify to the following:

____ I have reviewed the Consumer Information Summary and Disclosure brochure that pertains to this annuity with my agent, and I have been reasonably informed of the various features of this annuity, including but not limited to the withdrawal charge period, withdrawal charges, charges

for riders, and limitations on interest returns, before deciding to purchase this annuity.

___ I have discussed my current financial and insurance products with my agent before deciding to purchase this annuity.

___ I believe this transaction to be in my best interest, and I understand that if I am exchanging or replacing an existing annuity, I may incur surrender charges/fees and that I may not be able to reinstate this replaced contract.

___ I understand that if I take money out of this product in excess of the free withdrawal amount provided in the contract during the withdrawal charge period, I will incur a withdrawal charge. (Not applicable for SPIA purchase).

___ I understand that my agent will receive compensation/commission as a result of this transaction.

___ I have reviewed this Annuity Suitability Questionnaire, and I understand its contents.

___ I understand that the Company is relying on the information that I have provided on this questionnaire, and certify that it is complete and accurate to the best of my knowledge.

___ I have undergone a thorough discussion with my agent regarding the suitability of this annuity, and I certify it is suitable for my circumstances.

___ I understand that the Company does not warrant that its annuities will comply with Medicaid, Veterans' Benefits, or any other state or federal programs and therefore qualification for such programs cannot be considered a factor in determining the suitability of this product.

(Emphasis added.) (Tr. 42-43, 260-261, 442-445; Ex. 17, B). Diamond persuaded Mr. and Mrs.

W█████ to place their initials before each of these statements, and to sign and date below the certification on April 17, 2015, even though the annuity suitability questionnaire was devoid of Mr. and Mrs. W█████ suitability information. (Tr. 42-43, 260-261, 442-445; Ex. 13, 17, B).

83. We have found Diamond's testimony and Guetschow's testimony in this case to be untrustworthy in several material respects related to his licensing applications. We now find Diamond's testimony and Guetschow's testimony concerning the accuracy of Mr. and Mrs.

W [REDACTED] suitability profile information to be no more credible here. Diamond's act of obtaining Mr. and Mrs. W [REDACTED] signature for certification on a blank annuity suitability questionnaire is the act of securing a false assertion. This conduct along with Diamond and his assistant later supplying information designed to obtain an insurer's supervision approval renders the contents wholly unreliable as double self-serving hearsay statements. We give no probative value as to the truth of the contents. As to the contents' falsity, we do consider the contents below. (Tr. 442-445).

84. Diamond testified that handwritten notes, which he offered as evidence, were supposedly documentation of his in home meetings with customers to reflect their annual income, expenses and net worth. (Tr. 266-275, Ex. B, page 5). This testimony is not credible. The notes bear no indicia of reliability and appear suspiciously uniform in appearance on a plain paper despite purportedly being created at varied times and places. Most significantly, documented suitability information was not placed before the customer for certification as required under National Western's procedures. These handwritten notes are Diamond's self-serving hearsay and as to the truth of the contents are given no probative weight. (Tr. 442-445).

85. Further, Mr. W [REDACTED] credibly testified that the information Diamond added to the National Western annuity suitability questionnaire is inaccurate. (Tr. 200-206; Ex. 13).

86. Diamond misrepresented Mr. and Mrs. W [REDACTED] financial situation, insurance needs and financial objectives on the National Western annuity suitability questionnaire.

87. The statement directed by Diamond, written by Guetschow and without Mr. and Mrs. W [REDACTED] certification, concerning "Annual Income" in Item 1 on page 1 of the National Western annuity suitability questionnaire, was that Mr. and Mrs. W [REDACTED] annual income was "\$41,200." (Tr. 267-272; Ex. 13, 17, B).

88. The statement directed by Diamond that Mr. and Mrs. W [REDACTED] annual income was "\$41,200" in the National Western annuity suitability questionnaire is an untrue and misleading representation by Diamond. (Ex. 13, 17, 43, B).

89. The statement directed by Diamond, written by Guetschow and without the W [REDACTED] certification, concerning "Approximate Net Worth *after* purchase of this annuity" in Item 4 on page 1 of the National Western annuity suitability questionnaire, was that the W [REDACTED] approximate net worth was "\$250,000 – \$499,999." (Tr. 267-272; Ex. 17, B). "Net Worth" is defined by the National Western annuity suitability questionnaire to mean "total assets (excluding your primary residence and personal property, such as jewelry, furnishings and vehicles) less your total debts (excluding mortgages on primary residence)". (Ex. 17, 43, B).

90. We find that Mr. and Mrs. W [REDACTED] 2009 Ford Taurus and 2000 Ford Sable were not "collectibles" worth \$20,000. (Tr. 214, 268-269; Ex. 13).

91. The statement directed by Diamond that the W [REDACTED] "Approximate Net Worth *after* purchase of this annuity" was "\$250,000 – \$499,999" in the National Western annuity suitability questionnaire is an untrue and misleading representation by Diamond.

92. The statement directed by Diamond, written by Guetschow and without Mr. and Mrs. W [REDACTED] certification, concerning "'Liquid Net Worth' after the purchase of this annuity" in Item 9 on page 2 of the National Western annuity suitability questionnaire, was that Mr. and Mrs. W [REDACTED] liquid net worth after the purchase of the National Western annuity was "\$100,000+." (Tr. 267-272; Ex. 13, 17, B). "Liquid Net Worth" is defined by the National Western annuity suitability questionnaire as "the value of all of your assets that could readily convert to cash without imposition of fees or penalties (excluding mortgages on primary residence)." (Ex. 17, B).

93. The statement directed by Diamond that Mr. and Mrs. W [REDACTED] liquid net worth after the purchase of the National Western annuity was "\$100,000+" in the National Western annuity suitability questionnaire is an untrue and misleading representation by Diamond. (Tr. 267-272; Ex. 13, 17, B).

94. The statement directed by Diamond, written by Guetschow and without Mr. and Mrs. W [REDACTED] certification, concerning "financial objective(s) in purchasing this annuity" in Item 6 on page 2 of the National Western annuity suitability questionnaire, was that Mr. and Mrs. W [REDACTED] financial objectives included "Retirement Income" and "Safety of Principal." (Ex. 13, 17, B).

95. Mr. and Mrs. W [REDACTED] did not have a financial objective of receiving income, as the objective of the purchase was for "investment." (Ex. 13).

96. The statement directed by Diamond that Mr. and Mrs. W [REDACTED] financial objectives included "Retirement Income" is an untrue and misleading representation by Diamond. (Ex. 13, 17, B).

97. The statement directed by Diamond, written by Guetschow and without Mr. and Mrs. W [REDACTED] certification, concerning "Liquidity Needs and Financial Time Horizon in Item 13 on page 2 of the National Western annuity suitability questionnaire, was that Mr. and Mrs. W [REDACTED] intended to take their first distribution from the annuity in "4 - 6 Years." (Ex. 13, 17, B).

98. The statement directed by Diamond that Mr. and Mrs. W [REDACTED] intended to take their first distribution from the annuity in "4 - 6 Years" is an untrue and misleading representation by Diamond. (Ex. 13, 17, B).

99. The statement directed by Diamond, written by Guetschow and without Mr. and Mrs. W [REDACTED] certification, concerning the "Exchange or Replacement" in Item 18(b) on page 3 of the

National Western annuity suitability questionnaire, was that Mr. and Mrs. W [REDACTED] would benefit from a "Better income rider." (Ex. 13, 17, B).

100. The statement directed by Diamond that Mr. and Mrs. W [REDACTED] that they would benefit from a "Better income rider" is an untrue and misleading representation by Diamond. (Ex. 13, 17, B).

101. One seemingly uncontroverted issue appears to be that Diamond's self-declared primary financial objective was to sell annuities to Mr. and Mrs. W [REDACTED] on the idea that an annuity provides protection of "life savings from loss due to catastrophic illness or an extended stay in a nursing home." (Tr. 224, 256, 272-273, 338-339; Ex. F). In fact, this was the most important objective that Diamond claimed as a basis for him to believe the recommendation was suitable. (Tr. 273). Mr. W [REDACTED] agreed with Diamond's suggested concern about "stock market fluctuation," but Diamond offered little explanation concerning the National Western annuity performance, which did not match Mr. W [REDACTED] expectation. (Tr. 222-223; Ex. 13). While confessing the suitability of the recommendation was "questionable" as to "liquidity," Diamond's testimony offered no credible evidence that he gave consideration to countervailing factors in the event Mr. W [REDACTED] did not experience a catastrophic illness involving an extended stay in a nursing home. Diamond did not offer credible expertise of actual Medicaid eligibility "spenddown" strategies for long term support and services, nor offer any specific application of Iowa's regulations on Medicaid eligibility found in 441 Iowa Administrative Code, Chapter 75 to Mr. and Mrs. W [REDACTED] financial situation, insurance needs and financial objectives. (Tr. 195-227; Ex. F).

102. Diamond did not meaningfully describe or document other considerations based on factors related to age, health, annual income, financial experience, financial time horizons, or

the impact of varied future events – other than a nursing home stay – to be given to the National Western annuity’s benefits or features, nor did he describe related changes in various values under the terms of the annuity that might occur depending on future events. (Tr. 255-259).

103. More importantly, Diamond’s failure in the National Western annuity suitability questionnaire to describe – or to even remotely make reference to – Diamond’s declared most important objective to protect “life savings from loss due to catastrophic illness or an extended stay in a nursing home” demonstrates Diamond’s lack of good faith and fair dealing with Mr. and Mrs. W[REDACTED]. (Ex. 17). We find it was not reasonable to believe that the National Western annuity addressed the W[REDACTED] complete financial situation, insurance needs and financial objectives, because Diamond’s claimed most important financial objective to protect “life savings from loss due to catastrophic illness or an extended stay in a nursing home” is not documented in the National Western annuity suitability questionnaire. This absence from the documentation of this supposed “principal purpose” in proving the claimed basis is also not reasonable, in part, because the information in the suitability profile was at the direction of Diamond, written by Guetschow, and submitted to National Western without Mr. and Mrs. W[REDACTED] certification. The only reference to Medicaid in the National Western annuity suitability questionnaire is found in the certification for the applicant, which states:

I understand that the Company does not warrant that its annuities will comply with Medicaid, Veterans’ Benefits, or any other state or federal programs and therefore qualification for such programs cannot be considered a factor in determining the suitability of this product.

(Tr. 42-43, 260-261, 442-445; Ex. 17, B).

104. In issuing the annuity, National Western relied on the untrue, incomplete and misleading information attributed to Mr. and Mrs. W [REDACTED] in the National Western annuity suitability questionnaire.

105. Although the 87 year-old Mr. W [REDACTED] could not specifically remember a recommendation by Diamond to liquidate several mutual funds in securities brokerage accounts at Wells Fargo Advisors, LLC and Stifel, Nicolaus & Co, and a variable annuity with John Hancock Life Insurance Company (“Fargo, Stifel and Hancock Securities Liquidation transaction”), we do find there is circumstantial evidence that Diamond identified to Mr. and Mrs. W [REDACTED] that these specific securities should be liquidated and be used to fund the National Western annuity. (Tr. 210, 224-226; Ex. 13, 17, B).

106. The sales commission paid to Diamond on the National Western annuity transaction was \$6,713.93. (Tr. 275; Ex.19). Some sales commission was also paid to Michele Diamond and Gary Hanifen. Mr. W [REDACTED] was not familiar with these two individuals. (Ex. 13, B).

(2) Qualified Retirement Plan Mutual Funds Rollover

107. Diamond, during the sales presentation in the W [REDACTED] home on April 17, 2015, and simultaneous with his recommendation of the \$120,000 National Western annuity, also recommended that Mr. and Mrs. W [REDACTED] pay \$114,000 in premium to purchase a “Pallidium Century I” individual annuity issued by American National as a “rollover” in a “Qualified” plan or “IRA” (“Qualified Retirement Plan Mutual Funds Rollover”). (Tr. 196-230, Ex. 13, 14, B).

108. Diamond’s recommended “rollover” required the liquidation of identified securities held in Mr. W [REDACTED] defined benefit plan with The Brethren Church of Ashland, Ohio. (Tr. 201-208; Ex. 14, B). Mr. W [REDACTED] retirement plan contained a diversified portfolio of mutual funds: Templeton Golden Bond, Pimco Total Return, American Funds New World, Allianz NFJ

Dividend Value, American Funds Growth Fund, Baron Growth, Natixis Vaughan Nelson Mall Cap, and Thomburg International Value. (Ex. B).

109. Diamond's "rollover" recommendation to fund the American National annuity with the total of the assets in the Brethren Church defined benefit plan, identified for Mr. and Mrs. W [REDACTED] the specific securities to be liquidated – to wit: advising Mr. and Mrs. W [REDACTED] to sell the entirety of Mr. W [REDACTED] diversified portfolio of mutual funds in the plan. (Ex. 13, 14, B).

110. During the sales presentation in Mr. and Mrs. W [REDACTED] home on April 17, 2015, Diamond persuaded Mr. and Mrs. W [REDACTED] to sign a "blank" American National annuity suitability analysis form. (Tr. 260-261, Ex. 13, 15). The American National annuity suitability analysis form contained none of the W [REDACTED] suitability information when signed by Mr. and Mrs. W [REDACTED]. (Tr. 260-261, Ex. 13, 15).

111. The statement directed by Diamond, written by Guetschow and without the W [REDACTED] certification, concerning "Liquid Net Worth" in Item 8 on page 1 of the American National annuity suitability analysis form, was that Mr. and Mrs. W [REDACTED] liquid net worth was \$100,000 to \$250,000. "Liquid Net Worth" is defined by the American National annuity suitability analysis form as: "These are assets that can be easily converted to cash without incurring penalty charges after purchasing this annuity. Do not include funds from a reverse mortgage." (Ex. 13, 15, B).

112. The statement directed by Diamond that Mr. and Mrs. W [REDACTED] liquid net worth was \$100,000 to \$250,000 is an untrue and misleading representation by Diamond. (Tr. 267-272; Ex. 13, 15, B).

113. After consulting with the plan administrator for the Brethren Church retirement plan, Mr. and Mrs. W [REDACTED] cancelled the American National annuity purchase.

(3) “Double Barrel” Annuity Recommendations

114. Diamond’s simultaneous recommendations of the \$120,000 National Western annuity in the Fargo, Stifel and Hancock Securities Liquidation transaction and the \$114,000 American National annuity in the Qualified Retirement Plan Mutual Funds Rollover transaction would have resulted in a concentration into annuities with new liquidity restrictions of at least \$234,000 of Mr. and Mrs. W■■■■ \$286,951 in liquid net worth.

115. Diamond’s simultaneous recommendations with two insurance companies and his failure to describe the simultaneous recommendations on both annuity suitability forms intentionally concealed from both National Western and American National, Diamond’s recommendations to concentrate 81.5% of Mr. and Mrs. W■■■■ liquid net worth into annuity contracts with liquidity restrictions.

(4) Ink Pens and Estate Planning Services

116. The Division alleged, and we find that Diamond provided the gift of a novelty ink pen of an undetermined value to Mr. and Mrs. W■■■■ during Diamond’s sale, solicitation or negotiation of the \$120,000 National Western annuity in the Fargo, Stifel and Hancock Securities Liquidation transaction and the \$114,000 American National annuity in the Qualified Retirement Plan Mutual Funds Rollover transaction. However, the Division did not offer persuasive evidence that the gift in any manner influenced Mr. and Mrs. W■■■■ in Diamond’s sale, solicitation or negotiation of the \$120,000 National Western annuity in the Fargo, Stifel and Hancock Securities Liquidation transaction or the \$114,000 American National annuity in the Qualified Retirement Plan Mutual Funds Rollover transaction.

117. The Division alleged, and we find that Diamond offered to provide “free” estate planning services of an undetermined value to Mr. and Mrs. W■■■■ during Diamond’s sale, solicitation or

negotiation of the \$120,000 National Western annuity in the Fargo, Stifel and Hancock Securities Liquidation transaction and the \$114,000 American National annuity in the Qualified Retirement Plan Mutual Funds Rollover transaction. However, the Division did not offer persuasive evidence that the offer of estate planning services in any manner influenced Mr. and Mrs. W [REDACTED] in Diamond's sale, solicitation or negotiation of the \$120,000 National Western annuity in the Fargo, Stifel and Hancock Securities Liquidation transaction or the \$114,000 American National annuity in the Qualified Retirement Plan Mutual Funds Rollover transaction.

I. M [REDACTED] and J [REDACTED] G [REDACTED]

118. M [REDACTED] G [REDACTED] is currently living in Fort Dodge, Iowa at Friendship Haven, an assisted living facility. (Tr. 371-381). Mr. G [REDACTED] is now 84 years old. (Tr. 372). Mr. G [REDACTED] is married to J [REDACTED] G [REDACTED]. (Ex. 20; 32, A).

119. Mr. G [REDACTED] is retired, but has had experience in manufacturing, meat processing and lawn care. Mr. G [REDACTED] also served in the United States military. (Tr. 372).

120. Mr. G [REDACTED] has a limited understanding of annuities based on his prior ownership of annuities. (Tr. 373; Ex. 20).

121. Mr. G [REDACTED] attended one of Diamond's "seminars" on October 18, 2016 at the Starlight Best Western motel in Fort Dodge, Iowa after seeing an advertisement in the local newspaper, the Messenger. There were approximately 20 people in attendance. (Tr. 54, 373; Ex. 20, A).

122. Diamond was the primary presenter, and was accompanied by another individual whom was identified as "Mark Thomas," and a receptionist. Diamond presented to Mr. G [REDACTED] and other attendees several documents that described Diamond as a "Senior Tax Counsel" and "Senior Education Counsel." (Ex. 20, F). Diamond also represented that he was associated with

“Retirement Planning Services, Inc.” These representations led Mr. G [REDACTED] to believe that Diamond was a “financial planner.” (Ex. 20).

123. During the “seminar,” Diamond sought to persuade Mr. G [REDACTED] that he should adopt Diamond’s priority to protect “life savings from loss due to catastrophic illness or an extended stay in a nursing home.” (Tr. 256, 301-302, 338-339, 384-385).

124. Before leaving the “seminar,” Mr. G [REDACTED] completed a “Seminar Evaluation Form.” Diamond then scheduled a visit at their home for 3:00 p.m. on October 26, 2016. (SOC ¶36; Answer¶33; Tr. 373-381; Ex. 20, A).

125. Diamond went to Mr. and Mrs. G [REDACTED] home in Fort Dodge, Iowa on October 26, 2016 with the intent to sell annuities to them. (Ex. 20, A). The sales presentation lasted about two hours. (Tr. 383).

126. On October 26, 2016, both Mr. and Mrs. G [REDACTED] were 81 years old. (SOC ¶37; Answer ¶37; Tr. 371-372; Ex. 21).

127. In 2018, Mrs. G [REDACTED] became ill, requiring leg amputation and nursing care. (Tr. 379-380).

128. Mr. G [REDACTED] stated credibly during his interview with the Division’s investigator on June 9, 2017 that the G [REDACTED] annual gross income in 2016 was around “\$46,000.” (Ex. 20). We find the G [REDACTED] annual income was \$42,660, from the following sources:

Mr. G [REDACTED]	Social Security benefits of	\$15,600
Mrs. G [REDACTED]	Social Security benefits of	\$ 8,532
Mr. G [REDACTED]	annuity benefits of	\$10,944
Mrs. G [REDACTED]	annuity benefits of	\$ 1,116
Mr. G [REDACTED]	Veteran’s Administration benefits of	\$ 5,472
Mr. G [REDACTED]	county government pension at	\$ 996

(Ex. 20).

129. During the sales presentation in Mr. and Mrs. G [REDACTED] home on October 26, 2016, Diamond recommended “a plan” that Mr. and Mrs. G [REDACTED] pay \$99,010.85 in premium to purchase an individual annuity issued by American National. (Tr. 54, 375-378, Ex. 20, 21, 22, 23, A). The American National annuity was named “Pallidium Century I.”

130. Mr. G [REDACTED] did not understand the features and benefits of the American National annuity. Mr. G [REDACTED] did not understand the claim by Diamond that the American National annuity would protect “life savings from loss due to catastrophic illness or an extended stay in a nursing home,” nor in extended care living. (Tr. 384; Ex. 20).

131. During the sales presentation in the G [REDACTED] home on October 26, 2019, Diamond persuaded Mr. G [REDACTED] to sign a “blank” American National annuity suitability form. (Tr. 260-261, Ex. 22). The American National annuity suitability form contained none of Mr. G [REDACTED] suitability information when signed by Mr. G [REDACTED]. (Tr. 260-261, 442-445 Ex. 22, A).

132. The “Acknowledgment and Signatures” section on the American National annuity suitability form included the following signature certification, in pertinent part:

Did you fully complete all suitability questions above?

Yes. If yes, please acknowledge and sign the following:

I acknowledge that the annuity product I am applying for is a long-term contract with substantial penalties for early withdrawal. I believe that this product meets my financial needs and objectives. If I am exchanging my current annuity, I understand that with this exchange: (1) I am subject to the commencement of a new surrender charge period or commutation schedule; and (2) I will lose the existing contractual benefits.

(Tr. 52-56, 260-261, 442-445; Ex. 22, A). Diamond persuaded Mr. G [REDACTED] to sign and date below the certification on October 26, 2016, even though the annuity suitability questionnaire was devoid of the G [REDACTED] suitability information. (Tr. 52-56, 260-261, 442-445; Ex. 22, A).

133. We have found Diamond's testimony and Guetschow's testimony in this case to be untrustworthy in several material respects related to his licensing applications and in the W [REDACTED] recommendations. We now find Diamond's testimony and Guetschow's testimony concerning the accuracy of the information in the annuity suitability form to be no more credible here. Diamond's act of obtaining Mr. G [REDACTED] signature for certification on a blank annuity suitability form is securing a false assertion. This conduct along with Diamond and his assistant later supplying information designed to obtain an insurer's supervision approval renders the contents wholly unreliable as double self-serving hearsay statements. We give no probative value as to the truth of the contents. As to the contents' falsity, we do consider the contents below. (Tr. 442-445).

134. Diamond testified that the handwritten notes, which he offered as evidence, were supposedly documentation of his in home meetings with customers to reflect their annual income, expenses and net worth. (Tr. 275; Ex. A, page 8). This testimony is not credible. (Tr. 276-284). As with the recommendation to the W [REDACTED], the notes bear no indicia of reliability and appear suspiciously uniform in appearance on a plain paper despite purportedly being created at varied times and places. Most significantly, documented suitability information was not placed before the customer for certification as required under American National's procedures. These handwritten notes are Diamond's self-serving hearsay and as to the truth of the contents are given no probative weight. (Tr. 442-445).

135. The statement directed by Diamond, written by Guetschow and without the G [REDACTED] certification, concerning "Annual Gross Income" in Item 3 on page 1 of the American National annuity suitability form, was that the G [REDACTED] annual gross income was "\$66,400." (Tr. 374; Ex. 22, A).

136. The statement directed by Diamond that the G [REDACTED] annual gross income was "\$66,400" in the American National annuity suitability form was an untrue and misleading representation by Diamond. (Ex. 20, 22, A).

137. The statement directed by Diamond, written by Guetschow and without the G [REDACTED] certification, concerning "Estimated Net Worth" in Item 4 on page 1 of the American National annuity suitability form, was that the G [REDACTED] estimated net worth was "\$390,000." (Tr. 374-375; Ex. 22, A). In confirming "Estimated Net Worth," Diamond was required to "exclude primary residence, furnishings, automobiles, or funds from a reverse mortgage."

138. Mr. G [REDACTED] stated during his interview with the Division's investigator on June 9, 2017 and again at the hearing that Mr. G [REDACTED] did not know where Diamond could have gotten the information for an estimated net worth of \$390,000. Mr. G [REDACTED] provided the following net worth information from 2016:

Athene single premium universal life policy (Mr. G [REDACTED] - owner) with cash value of	\$84,252
Allianz annuity (Mr. G [REDACTED] - owner) with cash value of	\$23,000
Allianz annuity (Mrs. G [REDACTED] - owner) with cash value of	\$67,000
Aviva annuity (Mr. G [REDACTED] - owner) with cash value of	\$10,952
Aviva annuity (Mrs. G [REDACTED] - owner) with cash value of	\$43,071
Prudential annuity (owner not identified) with cash value of	\$27,900
Life insurance (Mr. G [REDACTED] - owner) with cash value of	\$ 7,500
Life insurance (Mrs. G [REDACTED] - owner) with cash value of	\$ 2,800
Less: \$38,000 home equity loan	(\$38,000)

(Ex. 20).

139. Mr. G [REDACTED] did testify that at the time of Diamond's recommendation he had approximately \$14,000 in the bank. (Tr. 388). Mr. and Mrs. G [REDACTED] actual estimated net worth on October 26, 2016 was less than \$243,475. (Tr. 54-55, 375; Ex. 20).

140. The statement directed by Diamond that Mr. and Mrs. G [REDACTED] estimated net worth on October 26, 2016 was "\$390,000" in the American National annuity suitability form was an untrue and misleading representation by Diamond. (Ex. 20, 22, A).

141. Diamond directed a statement to be placed under the "Acknowledgment and Signatures" section on the American National annuity suitability form, which provided:

Agent/Producer Section

Agent's Acknowledgement: In addition to the suitability information provided above I considered the following additional information. (Use separate page if necessary.)

The statement then directed by Diamond, written by Guetschow, and made without the G [REDACTED] knowledge, stated as follows:

Client is willing to give up \$88,465 death benefit in order to use the cash value \$84,440.95 to purchase this annuity so the money can continue to grow and they won't have to pay any more premiums to keep the policy.

(Ex. 20, 22).

142. Diamond recommended, as part of a replacement transaction, that Mr. G [REDACTED] surrender his single premium universal life insurance policy that was originally issued by Presidential Life Insurance Company on October 8, 2001. (Ex. 24). Mr. G [REDACTED] had paid \$37,405.50 in premium on January 8, 2002 for the Presidential Life Insurance policy. The Presidential Life Insurance Company and Mr. G [REDACTED] policy ("Athene policy") were acquired by Athene Annuity & Life Assurance Company of New York. The Athene policy has always carried a guaranteed interest rate of 6% per year. For the year of October 8, 2015 through October 7, 2016, the Athene policy's guaranteed credited interest was \$4,791.88 and the cost of insurance was \$863.46.

143. The statement directed by Diamond, written by Guetschow and without Mr. and Mrs. G [REDACTED] certification, concerning a comparison of "Guaranteed Declared/Fixed Interest Rate" in

Item 17(j) on page 2 of the American National annuity suitability form, was that the guaranteed declared/fixed interest rate of the Athene policy was “1%.”

144. The statement directed by Diamond that the guaranteed declared/fixed interest rate of the Athene policy was “1%” in the American National annuity suitability form was an untrue and misleading representation by Diamond. (Tr. 377-378; Ex. 20, 22, 24, A).

145. During the sales presentation in the G [REDACTED] home on October 26, 2016, Diamond persuaded Mr. G [REDACTED] to sign a “blank” American National non-qualified 1035 exchange request. (Tr. 378, 284-286, 442-445; Ex. 42). The American National non-qualified 1035 exchange request contained no instructions or information from Mr. G [REDACTED] when signed by Mr. G [REDACTED]. (Tr. 282-284, 378, 442-445; Ex. 42, A).

146. The statement directed by Diamond, written by Guetschow and without the G [REDACTED] certification, concerning Mr. G [REDACTED] “special instructions” in Item 4 on page 2 of the American National non-qualified 1035 exchange request, was “Please rush! Client waives all conservation.” (SOC ¶40; Answer ¶40; Tr. 374-378; Ex. 42, A).

147. Mr. G [REDACTED] did not waive conservation, nor did he give special instructions to rush the transaction or to waive conservation. (Tr. 282-284, 378, 442-445; Ex. 42, A).

148. The statement directed by Diamond that Mr. G [REDACTED] gave the special instructions written in the American National non-qualified 1035 exchange request to “Please rush! Client waives all conservation” was an untrue and misleading representation by Diamond. (Tr. 282-284, 378, 442-445; Ex. 42, A).

149. Diamond misrepresented Mr. and Mrs. G [REDACTED] financial situation, insurance needs and financial objectives on the American National annuity suitability form.

150. Again, it is uncontroverted that Diamond's self-declared primary objective was to sell annuities to Mr. and Mrs. G [REDACTED] on the idea that an annuity provides protection of "life savings from loss due to catastrophic illness or an extended stay in a nursing home." (Tr. 256, 272-273, 277, 338-339, 385; Ex. F). In fact, this was the most important objective that Diamond asserted as a basis for him to believe the recommendation was suitable. (Tr. 273). Diamond offered no credible evidence that he gave consideration to countervailing factors in the event Mr. G [REDACTED] did not experience a catastrophic illness involving an extended stay in a nursing home, or in the event it was Mrs. G [REDACTED] who required long term care. Diamond did not offer credible expertise of actual Medicaid eligibility "spenddown" strategies for long term support and services, nor offer specific application of Iowa's regulations on Medicaid eligibility found in 441 Iowa Administrative Code, Chapter 75 to Mr. and Mrs. G [REDACTED] particular financial situation, insurance needs and financial objectives. (Tr. 236-370; Ex. F).

151. As Mr. G [REDACTED] did not understand any claims by Diamond that the American National annuity would protect "life savings from loss due to catastrophic illness or an extended stay in a nursing home," nor any consequence from the annuity for extended care living for Mrs. G [REDACTED], when Mrs. G [REDACTED] had her leg amputated and required nursing care, Mr. G [REDACTED] surrendered the American National annuity in 2018 for \$90,150.39, and paying \$8,860 in surrender penalties took a substantial loss due to the illiquidity of the annuity. (Tr. 384; Ex. 20).

152. Once again, Diamond offered no credible support for his claim that his self-declared expertise of protecting "life savings from loss due to catastrophic illness or an extended stay in a nursing home" had any material significance for Mr. and Mrs. G [REDACTED]. Diamond did not meaningfully describe or document other considerations based on factors related to their age, health, annual income, financial experience, financial time horizons, or the impact that varied

future events – such as Mrs. G [REDACTED] serious health event within a year, and their related decision to move into the assisted living facility at Friendship Haven. (Tr. 255-259).

153. Again and very importantly, Diamond's failure in the American National annuity suitability form to describe – or to even remotely make reference to – his declared most important objective to protect "life savings from loss due to catastrophic illness or an extended stay in a nursing home" demonstrates Diamond's lack of good faith and fair dealing with Mr. and Mrs. G [REDACTED]. (Tr. 384-385; Ex. 17). We find it was not reasonable to believe that the replacement of the Athene single premium life insurance policy with the American National annuity addressed Mr. and Mrs. G [REDACTED] complete financial situation, insurance needs and financial objectives on the basis of Diamond's claimed most important financial objective to protect "life savings from loss due to catastrophic illness or an extended stay in a nursing home." This self-declared basis by Diamond is not documented in the American National annuity suitability form. The absence from suitability documentation is highly probative on the issue of whether or not the claimed basis is reasonable for any person, but we certainly, in any case, find it is not reasonable for Mr. and Mrs. G [REDACTED] particular circumstances because the information in the suitability profile was at the direction of Diamond, written by Guetschow, and submitted to American National without Mr. and Mrs. G [REDACTED] certification.

154. In issuing the annuity, American National relied on the untrue, incomplete and misleading information attributed to Mr. and Mrs. G [REDACTED] in the American National annuity suitability form.

155. Diamond was paid a commission of \$47.03 by American National for the sale of an annuity to Mr. and Mrs. G [REDACTED]. However, Michelle Diamond was paid \$4,655.97 in commission for the sale. (Ex. 21, 25).

156. The Division alleged, and we find that Diamond provided the gift of a novelty ink pen of an undetermined value to Mr. and Mrs. G [REDACTED] during Diamond's sale, solicitation or negotiation of the \$99,010.85 American National annuity. However, the Division did not offer persuasive evidence that the gift in any manner influenced Mr. and Mrs. G [REDACTED] in Diamond's sale, solicitation or negotiation of the \$99,010.85 American National annuity.

157. The Division alleged, and we find that Diamond offered to provide "free" estate planning services of an undetermined value to Mr. and Mrs. G [REDACTED] during Diamond's sale, solicitation or negotiation of the \$99,010.85 American National annuity. However, the Division did not offer persuasive evidence that the offer of estate planning services in any manner influenced Mr. and Mrs. G [REDACTED] in Diamond's sale, solicitation or negotiation of the \$99,010.85 American National annuity.

J. F [REDACTED] V [REDACTED]

158. F [REDACTED] V [REDACTED] is currently living in an apartment in Webster City, Iowa. (Tr. 138-163; Ex. 27). Mrs. V [REDACTED] is now 87 years old. (Tr. 59-63, 138; Ex. 27). She has been widowed since 2005. (Tr. 284, Ex. 27, C).

159. Mrs. V [REDACTED] is now retired, following a 31 year career teaching elementary and preschool and children with disabilities. Prior to moving into an apartment she lived on a farm near Blairsburg, Iowa. (Tr. 139; Ex. C).

160. Mrs. V [REDACTED] has a very limited understanding of annuities or investments. (Tr. 59-63, 139-140; Ex. 27).

161. Mrs. V [REDACTED] attended one of Diamond's "seminars" on October 19, 2016 in Fort Dodge, Iowa after seeing an advertisement in the Fort Dodge and Webster City newspaper. There were two free lunch and two free dinner seminars over the two days and a large number of

Iowans attended. Many of those in attendance were older people and it appeared Diamond was targeting senior citizens. Diamond was the primary presenter, but he was accompanied by 4-5 other people. (Tr. 59-63, 140; Ex. 20, 27, C).

162. Diamond was the presenter and a number of “others that they said were from banking and financial planning.” (Tr. 140; Ex. 27). Mrs. Va [REDACTED] made the following observations in her testimony:

[Diamond] talked quite a bit about reducing assets. If you were married, to divide them, and if I were younger – . I asked a question how a widow or widower were to do that, and he could better do that if he would come to my apartment, So we made the – to talk to me one to one, so we made that appointment. He said that I should – see, I was interested in a trust. And he said that they could do all the things in a trust if I purchase an annuity through them, but I should not talk with either Edward Jones or the bank. And I said I wanted to talk to my sons, and he was concerned about how long it would take. At the time I also went to a funeral planning meeting in Webster City, and they were talking about annuities and how this kind of annuity was not smart for older people for estate planning. And they said there were red flags all over it.

(Tr. 140-141).

163. During the “seminar,” Diamond sought to persuade Mrs. V [REDACTED] that she should adopt Diamond’s priority to protect “life savings from loss due to catastrophic illness or an extended stay in a nursing home.” He claimed that assets would go so low that the consumer would be eligible for Medicaid. He claimed consumers could lower their assets to avoid probate. However, his presentation was mostly about married couples and Mrs. V [REDACTED] wanted to know how his ideas applied to a widow. (Tr. 59-63, 140, 256, 284-285, 338-339; Ex. 27).

164. Before leaving the “seminar,” Mrs. V [REDACTED] completed a “Seminar Evaluation Form.” Diamond then scheduled a visit at their home for 10:30 a.m. on October 27, 2016. (SOC ¶45; Answer ¶45; Tr. 138-163; Ex. 20, C). Mrs. V [REDACTED] made a note of Diamond’s nursing home care claims when in response to a question about which topics best describe the reason for

her “seminar” attendance, she wrote “How to protect assets and what is exempt from nursing home attachment.” (Ex. C).

165. Diamond went to Mrs. V [REDACTED] apartment in Fort Dodge, Iowa on October 27, 2016 with the intent to sell annuities to her. (Ex. 20, C). Diamond’s sales presentation lasted about 90 minutes. (Ex. 27). He represented that he was with “Retirement Planning Services, Inc.” (Ex. 27).

166. On October 27, 2016, Mrs. V [REDACTED] was 84 years old. (SOC ¶46; Answer ¶46; Tr. 143, 284; Ex. 21, 27).

167. Mrs. V [REDACTED] stated during her interview with the Division’s investigator on May 25, 2017, that her annual income in 2016 was around “\$50,000.” (Ex. 27).

168. During the sales presentation in Mrs. V [REDACTED] apartment on October 27, 2016, Diamond recommended that Mrs. V [REDACTED] pay \$112,010 in premium to purchase an individual annuity issued by American National. (Tr. 59-63, 141-144, Ex. 28, C). The American National annuity was named “Pallidium Century I.”

169. Diamond recommended that Mrs. V [REDACTED] fund the premium for the American National annuity with a “Full Transfer” through a “non-1035 Exchange” by liquidating securities holdings in her account with Edward Jones, a securities broker-dealer, a customer account that had been open for approximately 15 years. (Tr. 144; Ex. 27, 30).

170. Diamond told Mrs. V [REDACTED] that her investments at Edward Jones were “no good” because of market fluctuation. (Ex. 27).

171. Mrs. V [REDACTED] told Diamond that her Edward Jones account was transferred upon death to her children thereby already avoiding probate. Diamond told Mrs. V [REDACTED] “all they will get is stocks and that is not worth anything.” (Ex. 27).

172. We find Diamond was intentionally disparaging Mrs. V [REDACTED] securities using “heavy persuasion” to convince Mrs. V [REDACTED] to liquidate her stock holdings at Edward Jones. (Ex. 27).

173. Mrs. V [REDACTED] Edward Jones’ financial advisers did business from their office in Webster City, Iowa. The diversified stock portfolio held by Mrs. V [REDACTED] at Edward Jones, included stock in Aqua America, AT&T, Chemours Co., Coca-Cola, E I du Pont, GlaxoSmithKline, Johnson & Johnson, Middlesex Water, Potash Corp. of Saskatchewan, Proctor & Gamble, Royal Dutch Shell, and Target. (Tr. 159-160; Ex. C). On May 27, 2016, the securities portfolio in her account at Edward Jones had a value of \$112,091.27. (Tr. 159-160; Ex. C).

174. Mrs. V [REDACTED] did also have \$33,000 at her bank and an annuity with Farm Bureau with a value of \$37,000. (Tr. 61-62, 150-154).

175. Diamond misrepresented that Mrs. V [REDACTED] could draw “any amount of money at any time it was needed to live on” from “this fund,” the American National annuity. (Ex. 27).

176. Diamond did not explain the features and benefits of the annuity to Mrs. V [REDACTED] at the sales presentation in her apartment and she did not understand the features and benefits of the American National annuity. (Ex. 27). Diamond claimed that “a trust” was needed to protect assets and preparation of a trust would be at no charge. (Ex. 27).

177. During the sales presentation in Mrs. V [REDACTED] apartment on October 27, 2016, Diamond persuaded Mrs. V [REDACTED] to sign a “blank” American National annuity suitability form. (Tr. 141, 284-286, 442-445; Ex. 27, 29). The American National annuity suitability form contained none of Mrs. V [REDACTED] suitability information when signed by Mrs. V [REDACTED]. (Tr. 60-63, 284-286, 442-445 Ex. 27, 29, C).

178. The "Acknowledgment and Signatures" section on the American National annuity suitability form included the following signature certification, in pertinent part:

Did you fully complete all suitability questions above?

Yes. If yes, please acknowledge and sign the following:

I acknowledge that the annuity product I am applying for is a long-term contract with substantial penalties for early withdrawal. I believe that this product meets my financial needs and objectives. If I am exchanging my current annuity, I understand that with this exchange: (1) I am subject to the commencement of a new surrender charge period or commutation schedule; and (2) I will lose the existing contractual benefits.

(Tr. 60-63, 284-286, 442-445; Ex. 27, 29, C). Diamond persuaded Mrs. V [REDACTED] to sign and date below the certification on October 27, 2016, even though the annuity suitability questionnaire was devoid of Mrs. V [REDACTED] suitability information. (Tr. 60-63, 284-286, 442-445; Ex. 22, 27, C).

179. We have found Diamond's testimony and Guetschow's testimony in this case to be untrustworthy in several material respects related to his licensing applications, the W [REDACTED] recommendations, and the G [REDACTED] recommendations. We now find Diamond's testimony and Guetschow's testimony concerning the accuracy of Mrs. V [REDACTED] suitability profile information to be no more credible here. Diamond's act of obtaining Mrs. [REDACTED] signature for certification on a blank annuity suitability form is securing a false assertion. This conduct along with Diamond and his assistant later supplying information designed to obtain an insurer's supervision approval renders the contents wholly unreliable as double self-serving hearsay statements. We give no probative value as to the truth of the contents. As to the contents' falsity, we do consider the contents below. (Tr. 442-445).

180. Diamond testified that the handwritten notes, which he offered as evidence, were supposedly documentation of his in home meeting with customers to reflect their annual income,

expenses and net worth. (Tr. 286; Ex. C, page 3). This testimony is not credible. (Tr. 286-288). As with the recommendations to the W [REDACTED] and the G [REDACTED], the notes bear no indicia of reliability and appear suspiciously uniform in appearance on a plain paper despite purportedly being created at varied times and places. Most significantly, documented suitability information was not placed before the customer for certification as required under American National's procedures. These handwritten notes are Diamond's self-serving hearsay and as to the truth of the contents are given no probative weight. (Tr. 442-445).

181. The statement directed by Diamond, written by Guetschow and without Mrs. V [REDACTED] certification, concerning "Liquid Net Worth" in Item 7 on page 1 of the American National annuity suitability form, was that Mrs. V [REDACTED] liquid net worth was "\$150,000+." (Tr. 145; Ex. 29, C). "Liquid Net Worth" is defined by the American National annuity suitability analysis form as: "These are assets that can be easily converted to cash without incurring penalty charges after purchasing this annuity. Do not include funds from a reverse mortgage." (Ex. 29, C).

182. The statement directed by Diamond that Mrs. V [REDACTED] liquid net worth was "\$150,000+" in the American National annuity suitability form was an untrue and misleading representation by Diamond. (Ex. 29, C).

183. Recognizing the untrue and misleading nature of his misrepresentation concerning Mrs. V [REDACTED] liquid net worth, Diamond at the hearing falsely testified that he had also considered as a liquid asset the possibility of "a hundred thousand line of credit" on Mrs. V [REDACTED] farm. (Tr. 288-289). We find this dishonest and belated effort by Diamond to buttress the reasonableness of his October 27, 2016, recommendation to an 84 year old widow to be

particularly disingenuous. (Tr. 288-289, 445-446). We give Mr. Diamond's testimony on this point no credibility.

184. Diamond directed a statement to be placed under the "Acknowledgment and Signatures" section on the American National annuity suitability form, which provided:

Agent/Producer Section

Agent's Acknowledgment: In addition to the suitability information provided above I considered the following additional information. (Use separate page if necessary.)

The statement then directed by Diamond, written by Guetschow, and made without Mrs. V [REDACTED] knowledge, stated as follows: "Safety from market loss long term guaranteed growth." (Ex. 29). Mrs. V [REDACTED] primary objective was not "market loss." (Ex. 27).

185. Diamond offered no credible support that Mrs. V [REDACTED] provided to him information that would support a belief that his recommended annuity addressed her financial situation, insurance needs or financial objectives. As Mrs. V [REDACTED] was a widow, Diamond was unable to use his declared most important objective to protect "life savings from loss due to catastrophic illness or an extended stay in a nursing home." Diamond was left with the choice of walking away from making a sale to an older, widowed sales prospect or trying to simply make up a suitability reason, so he decided to later direct Guetschow to write in "safety from market loss long term guarantee" as a justification. Diamond did not meaningfully describe or document other considerations based on factors related to her age, health, annual income, financial experience, financial time horizons, especially as these related to liquidity. (Tr. 255-259). His false testimony about considering the potential line of credit, which was actually only discovered by staff days after Diamond had already made the annuity recommendation to Mrs. V [REDACTED] and to fund it with liquidation of her securities portfolio

reveals the extent of Diamond's dishonesty and his willingness to invent a "basis" for his annuity recommendation after the fact.

186. We find from Diamond's testimony that he did not possess any knowledge or expertise related to stock investments, mutual funds or other securities, nor that he has received any training or passed any examinations related to these subjects. Further, there is no evidence that Diamond during any of the relevant time period was registered in Iowa as an investment adviser or investment adviser representative with the Division.

187. During the sales presentation in Mrs. V [REDACTED] apartment on October 27, 2016, Diamond persuaded Mrs. V [REDACTED] to sign a "blank" American National non-qualified 1035 exchange request. (Tr. 141, 284-286, 442-445; Ex. 30). The American National non-qualified 1035 exchange request contained no instructions or information from Mrs. V [REDACTED] when signed by Mrs. V [REDACTED]. (Tr. 60-63, 141, 284-286, 442-445; Ex. 30, C).

188. The statement directed by Diamond, written by Guetschow and without Mrs. V [REDACTED] certification, concerning Mrs. V [REDACTED] "special instructions" in Item 4 on page 2 of the American National non-qualified 1035 exchange request, was "Please rush! Client waives all conservation & doesn't want to be contacted by her broker!" (SOC ¶49; Answer ¶49; Tr. 62-63; Ex. 30; C).

189. The representation of "Please rush! Client waives all conservation & doesn't want to be contacted by her broker!" is a fraud. (Ex. 27). In fact, Diamond pressured, if not directed, Mrs. V [REDACTED] to not talk to her broker. (Tr. 141-145). Mrs. V [REDACTED] gave an instruction to Diamond that she wanted to "wait" and "not do anything" until after Mrs. V [REDACTED] had spoken to her sons and she had called Edward Jones. (Ex. 27). Diamond chose to not write these express instructions to "wait" into the document, and then Diamond later intentionally

ignored her actual instructions. (Tr. 140-145; Ex. 27). Diamond falsified the contents of the non-qualified 1035 exchange request in an attempt to cover his tracks. Despite Mrs. V [REDACTED] instructions to “wait” “not do anything” until after Mrs. V [REDACTED] had spoken to her sons and she had called Edward Jones, Diamond submitted to American National the application for the individual annuity, the annuity suitability form and the non-qualified 1035 exchange request seeking to liquidate Mrs. V [REDACTED] Edward Jones’ account. (Ex. 27, 28, 29, 30, C). Mrs. V [REDACTED] did not waive conservation, nor did she give special instructions to rush the transaction or to waive conservation. (Tr. 62-63, 141-142, 284-286, 442-445; Ex. 27, 30, C).

190. The statement directed by Diamond that Mrs. V [REDACTED] gave special instructions written in the American National non-qualified 1035 exchange request to “Please rush! Client waives all conservation” was an untrue and misleading representation by Diamond. (Tr. 62-63, 141-145, 284-286, 442-445; Ex. 27, 30, C).

191. The Division alleged that Diamond promoted and provided to Mrs. V [REDACTED] a gift represented as a “solid gold” ink pen “worth a lot” during Diamond’s sale, solicitation or negotiation of the \$112,010 American National annuity, but we find it was actually of an undetermined value. (Ex. 27). Further, the Division did not offer persuasive evidence that the gift in any manner influenced Mrs. V [REDACTED] in Diamond’s sale, solicitation or negotiation of the \$112,010 American National annuity.

192. The Division alleged, and we find that Diamond offered to provide “free” estate planning services of an undetermined value to Mrs. V [REDACTED] during Diamond’s sale, solicitation or negotiation of the \$112,010 American National annuity. (Ex. 27). However, the Division did not offer persuasive evidence that the offer of estate planning services in any manner influenced

Mrs. V [REDACTED] in Diamond's sale, solicitation or negotiation of the \$112,010 American National annuity.

193. Within approximately six weeks of the October 27, 2016, sales presentation in her home, Mrs. V [REDACTED] received a telephone call from a representative from Edward Jones concerning a request to liquidate her account. (Ex. 27, C). After speaking to her Edward Jones agent, Mrs. V [REDACTED] called for Diamond to tell him to "not do this." (Ex. 27, C). On the telephone Diamond pressured Mrs. V [REDACTED] and told her "you were so enthused." (Ex. 27, C). Then an associate of Diamond named Lucy called and tried to pressure Mrs. V [REDACTED] to change her mind and not "cancel" the annuity transaction. (Ex. 27, C). Diamond telephoned Mrs. V [REDACTED] again to pressure her. During the call Diamond became angry, and Mrs. V [REDACTED] finally "hung up" on Diamond. (Tr. 141; Ex. 27, C).

K. R [REDACTED] and J [REDACTED] S [REDACTED]

194. J [REDACTED] S [REDACTED] is currently living in Webster City, Iowa. (Tr. 164). Mrs. S [REDACTED] is now 84 years old. (Tr. 138). Mrs. S [REDACTED] was married to R [REDACTED] S [REDACTED], but he passed away on March 31, 2019 at the age of 90 years old. (Tr. 164, Ex. 32, 33, 34, D)

195. Mrs. S [REDACTED] retired in 2000, following a 32 year teaching career in Webster City, Iowa, where Mrs. S [REDACTED] taught first grade children. (Tr. 164; Ex. D).

196. Mr. and Mrs. S [REDACTED] had a very limited understanding of annuities or investments. (Tr. 64, 165; Ex. 31).

197. Mr. and Mrs. S [REDACTED] attended one of Diamond's "seminars" on October 19, 2016 in Fort Dodge, Iowa after seeing an advertisement in the local newspaper. It was advertised as an educational seminar. Mr. S [REDACTED] was led to believe that Diamond was a government official, and not related to selling anything. (Tr. 64, 165; Ex. 31, D).

198. During the “seminar,” Diamond sought to persuade Mr. and Mrs. S [REDACTED] that they should adopt Diamond’s priority to protect “life savings from loss due to catastrophic illness or an extended stay in a nursing home.” (Tr. 66, 165, 171, 224, 256, 301-302, 338-339; Ex. 31).

199. Before leaving the “seminar,” Mr. and Mrs. S [REDACTED] completed a “Seminar Evaluation Form.” Diamond then scheduled a visit at their home for 10:30 a.m. on October 26, 2016. (SOC ¶53; Answer ¶53; Tr. 163-193; Ex. 31, D). Mr. and Mrs. S [REDACTED] made note of Diamond’s nursing home claims when in response to a question about which topics best describe the reason for their “seminar” attendance, they wrote “How to protect assets from nursing home.” (Ex. 31, D).

200. Diamond went to Mr. and Mrs. S [REDACTED] home in Webster City, Iowa on October 26, 2016 with the intent to sell annuities to her. (Ex. 31, D). Diamond’s sales presentation lasted about 90 minutes. (Ex. 31).

201. On October 26, 2016, Mr. S [REDACTED] was 87 years old and Mrs. S [REDACTED] was 84 years old. (SOC ¶54; Answer ¶54; Tr. 166; Ex. 31, 32, D).

202. During the sales presentation in the S [REDACTED] home on October 26, 2016, Diamond recommended that Mr. and Mrs. S [REDACTED] purchase three individual annuities issued by American National. (Tr. 163-190; Ex. 28, 31, D). The first recommendation was to pay \$9,300 in premium for an individual annuity owned by Mr. S [REDACTED]; the second recommendation was to pay \$27,500 in premium for another individual annuity owned by Mr. S [REDACTED]; and the third recommendation was to pay \$31,000 in premium for another individual annuity owned by Mr. S [REDACTED]. All three were American National annuities named “Pallidium Century I.”

203. Diamond recommended that Mr. and Mrs. S [REDACTED] fund the premium for the \$9,300 or first American National annuity with a “rollover” of “Qualified” funds in a tradition Individual

Retirement Account (“IRA”) by surrendering a deferred annuity issued by Thrivent Financial and replacing it with the American National annuity. (“IRA Annuity Rollover transaction”) (Tr. 191; Ex. 31, D).

204. Diamond recommended that Mr. and Mrs. S████ fund the premium for the \$27,500 or second American National annuity “through a “1035 Exchange” by surrendering a Thrivent Financial whole life insurance contract with a surrender value of \$16,750 and another Thrivent Financial life insurance policy with a surrender value of \$10,750 and replacing them with the American National annuity. (“Thrivent Life Insurance Replacement transaction”) (Tr. 191; Ex. 31, 32, D).

205. Diamond recommended that Mr. and Mrs. S████ fund the premium for the \$31,000 American National annuity by liquidating the entirety of the securities holdings of mutual funds in their account with Edward Jones, a securities broker-dealer. (“Edward Jones Mutual Fund Liquidation transaction”). (Tr. 191; Ex. 31, D).

206. Mr. and Mrs. S████ Edward Jones’ financial adviser did business from his office in Webster City, Iowa. The diversified mutual fund portfolio held by Mr. and Mrs. S████ at Edward Jones, included mutual funds: American Balanced Fund, Capital Income Builder, Income Fund of America. (Tr. 191; Ex. 31, D). On December 31, 2015, the securities portfolio in their account at Edward Jones had a value of \$31,014.16. (Tr. 191; Ex. 31, D).

207. Mrs. S████ did testify that she and Mr. S████ may have also had \$25,000 at their bank in checking and savings accounts. (Tr. 175).

208. Mrs. S████ credibly corroborated information in documents reviewed during the Division investigator’s interview on May 25, 2017 that Mr. and Mrs. S████ estimated net worth excluding their home, furnishings and vehicles was \$92,800. (Ex. 31). As of May 17,

2017, the securities holdings of mutual funds in their account with Edward Jones had increased to approximately \$35,000. (Ex. 31).

209. Mr. and Mrs. S [REDACTED] did not fully understand the various features and benefits of the American National annuity. (Tr. 65, 165-172; Ex. 31).

210. During the sales presentation in the S [REDACTED] home on October 26, 2016, Diamond took them through the documents very quickly and persuaded Mr. and Mrs. S [REDACTED] to sign "blank" American National annuity suitability forms for each of the three recommended transactions. (Tr. 165-166, 442-445; Ex. 31, 33, D). None of the three American National annuity suitability forms contained any of Mr. and Mrs. S [REDACTED] suitability information when signed by Mr. and Mrs. S [REDACTED]. (Tr. 165-166, 442-445 Ex. 31, 33, D).

211. The "Acknowledgment and Signatures" section on each of the three American National annuity suitability forms included the following signature certification, in pertinent part:

Did you fully complete all suitability questions above?

Yes. If yes, please acknowledge and sign the following:

I acknowledge that the annuity product I am applying for is a long-term contract with substantial penalties for early withdrawal. I believe that this product meets my financial needs and objectives. If I am exchanging my current annuity, I understand that with this exchange: (1) I am subject to the commencement of a new surrender charge period or commutation schedule; and (2) I will lose the existing contractual benefits.

(Tr. 164-172, 442-445; Ex. 22, A). Diamond persuaded Mr. and Mrs. S [REDACTED] to sign and date below the certification on October 26, 2016, even though the annuity suitability questionnaire was devoid of Mr. and Mrs. S [REDACTED] suitability information. (Tr. 63-66, 164-172, 284-286, 442-445; Ex. 33, D).

212. We have found Diamond's testimony and Guetschow's testimony in this case to be untrustworthy in several material respects related to his licensing applications, the W [REDACTED]

recommendations, the G [REDACTED] recommendations, and Mrs. V [REDACTED] recommendations. We now find Diamond's testimony and Guetschow's testimony concerning the accuracy of Mr. and Mrs. S [REDACTED] suitability profile information to be no more credible here. Diamond's act of obtaining Mr. and Mrs. S [REDACTED] signatures for certification on a blank annuity suitability form is securing a false assertion. This conduct along with Diamond and his assistant later supplying information designed to obtain an insurer's supervision approval renders the contents wholly unreliable as double self-serving hearsay statements. We give no probative value as to the truth of the contents. As to the contents' falsity, we do consider the contents below. (Tr. 442-445).

213. Diamond testified that the handwritten notes, which he offered as evidence, were supposedly documentation of his in home meeting with customers to reflect their annual income, expenses and net worth. (Tr. 286; Ex. D, page 3). This testimony is not credible. (Tr. 292-300). As with the recommendations to the W [REDACTED], the G [REDACTED] and Mrs. V [REDACTED], the notes bear no indicia of reliability and appear suspiciously uniform in appearance on a plain paper despite purportedly being created at varied times and places. Most significantly, documented suitability information was not placed before the customer for certification as required under American National's procedures. These handwritten notes are Diamond's self-serving hearsay and as to the truth of the contents are given no probative weight. (Tr. 442-445).

214. The statement directed by Diamond, written by Guetschow and without Mr. and Mrs. S [REDACTED] certification, concerning "Estimated Net Worth" in Item 6 on page 1 of each of the three American National annuity suitability forms, were that Mr. and Mrs. S [REDACTED] estimated net worth was "\$290,000." (Tr. 63-66, 164-172; Ex. 29, D). In confirming "Estimated Net Worth," Diamond was required to "exclude primary residence, furnishings, automobiles, or funds from a reverse mortgage." (Ex. 33, D).

215. The statements directed by Diamond that Mr. and Mrs. S [REDACTED] estimated net worth was "\$290,000" in each of the three American National annuity suitability forms were untrue and misleading representations by Diamond. (Ex. 33, D).

216. The statements directed by Diamond, written by Guetschow and without Mr. and Mrs. S [REDACTED] certification, concerning "Liquid Net Worth" in Item 7 on page 1 of each of the three American National annuity suitability forms, were that Mr. and Mrs. S [REDACTED] liquid net worth was "\$100,000+." (Tr. 167; Ex. 33, D). "Liquid Net Worth" is defined by the American National annuity suitability analysis form as: "These are assets that can be easily converted to cash without incurring penalty charges after purchasing this annuity. Do not include funds from a reverse mortgage." (Tr. 167; Ex. 33, D).

217. The statements directed by Diamond that Mr. and Mrs. S [REDACTED] liquid net worth was "\$100,000+" in each of the three American National annuity suitability forms were untrue and misleading representations by Diamond. (Tr. 167; Ex. 33, D).

218. Diamond directed a different statement to be placed under the "Acknowledgment and Signatures" section on each of the three American National annuity suitability forms, which provided:

Agent/Producer Section

Agent's Acknowledgement: In addition to the suitability information provided above I considered the following additional information. (Use separate page if necessary.)

(Ex. 33, D).

219. The statement then directed by Diamond, written by Guetschow, and made without Mr. or Mrs. S [REDACTED] knowledge, for the IRA Annuity Rollover transaction on the first American National annuity suitability form stated as follows: "long term protection Estate planning."
(Ex. D).

220. The statement then directed by Diamond, written by Guetschow, and made without Mr. or Mrs. S [REDACTED]'s knowledge, for the Life Insurance Replacement transaction on the second American National annuity suitability form stated as follows: "Client understands he's losing the death benefit by moving the funds from this annuity. He feels having access to the money is more important than leaving it to his heirs." (Ex. 33, D).

221. The statement then directed by Diamond, written by Guetschow, and made without Mr. or Mrs. S [REDACTED] knowledge, for the Edward Jones Mutual Fund Liquidation transaction on the third American National annuity suitability form stated as follows: "Safety from market loss Tax deferral." (Ex. D).

222. Diamond offered no credible support that Mr. and Mrs. S [REDACTED] provided to him information that would reasonably support a belief that these three recommended annuity transactions addressed their particular financial situation, insurance needs or financial objectives. Diamond sought to persuade Mr. and Mrs. S [REDACTED] that protection from nursing home care was appropriate and this approach was "Medicaid for the not poor," but this bothered their consciences. (Ex. 31). Diamond was unable to use his declared most important objective to protect "life savings from loss due to catastrophic illness or an extended stay in a nursing home," because of Mr. and Mrs. S [REDACTED] conscience about "saying we don't have enough to live on and so the government needs to pay for our nursing home." (Tr. 171). Diamond was left with the choice of walking away from Mr. or Mrs. S [REDACTED] or finding other justifications for the sale.

223. We find these three claimed bases for the three recommended transactions to be wholly inconsistent. Diamond's claimed basis for the IRA Annuity Rollover is "long term planning" and "estate planning," except that the replaced annuity is simply a different annuity, and is

contrary to the claimed basis for Thrivent Life Insurance Replacement transaction, which is “having access to money is more important than leaving it to his heirs.” Of course, “having access to the money...” directly contradicts the advice to liquidate Mr. and Mrs. S [REDACTED] securities in the Edward Jones Mutual Fund Liquidation transaction and moving the assets into an annuity that carries liquidity restrictions. Finally, the recommended annuities are not a liquid vehicle for a couple in their upper 80’s to avoid the fluctuation in the market, as Diamond claims he was addressing in his Life Insurance Replacement transaction recommendation.

224. Diamond did not meaningfully describe or document considerations based on factors related to her age, health, annual income, financial experience, financial time horizons, especially as these related to liquidity. (Tr. 255-259, 297-301). The inconsistent justifications added to the documents after his October 19, 2016, meeting with Mr. and Mrs. S [REDACTED] and his recommendations to Mr. and Mrs. S [REDACTED] to roll over one annuity to another, surrendering significant death benefit to replace with an annuity, and to liquidate their securities portfolio, once again demonstrates Diamond’s untrustworthiness, and his willingness to invent a “basis” for his claimed belief of suitability.

225. During the sales presentation in Mr. and Mrs. S [REDACTED] home on October 26, 2016, Diamond persuaded Mr. and Mrs. S [REDACTED] to sign a “blank” American National non-qualified 1035 exchange request for the Life Insurance Replacement transaction. (Tr. 165-166, 297-301, 442-445; Ex. 34, D). The American National non-qualified 1035 exchange request for the Thrivent Life Insurance Replacement transaction contained no instructions or information from Mr. and Mrs. S [REDACTED] when signed by Mr. and Mrs. S [REDACTED]. (Tr. 165-166, 297-301, 442-445; Ex. 34, D).

226. The statement directed by Diamond, written by Guetschow and without Mr. and Mrs. S [REDACTED] certification, concerning Mr. and Mrs. S [REDACTED] "special instructions" in Item 4 on page 2 of the American National non-qualified 1035 exchange request form for the Thrivent Life Insurance Replacement transaction, was "Please rush! Client waives all conservation & doesn't want to be contacted by Thrivent Reps." (Tr. 168; Ex. 31, 34; D).

227. In fact, Diamond tried to persuade Mr. and Mrs. S [REDACTED] to not talk to their Thrivent agent. (Tr. 168). Mr. and Mrs. S [REDACTED] did not tell Diamond that they intended to waive conservation, nor did they give him special instructions to "rush" the transaction. (Tr. 168, 297-301, 442-445; Ex. 31, 34, D).

228. The statement directed by Diamond that Mr. and S [REDACTED] gave the special instructions written in the American National non-qualified 1035 exchange request for the Thrivent Life Insurance Replacement transaction to "Please rush! Client waives all conservation & doesn't want to be contacted by Thrivent Reps" was an untrue and misleading representation by Diamond. (Tr. 168, 297-301, 442-445; Ex. 31, 34, D).

229. The Division alleged, and we find that Diamond provided the gift of a novelty ink pen of an undetermined value to Mr. and Mrs. S [REDACTED] during Diamond's sale, solicitation or negotiation of the \$67,800 in American National annuities. However, the Division did not offer persuasive evidence that the gift in any manner influenced Mr. and Mrs. S [REDACTED] in Diamond's sale, solicitation or negotiation of the \$67,800 in American National annuities. (Ex. 31).

230. The Division alleged, and we find that Diamond offered to provide "free" estate planning services of an undetermined value to Mr. and Mrs. S [REDACTED] during Diamond's sale, solicitation or negotiation of the \$67,800 in American National annuities. However, the Division did not offer persuasive evidence that the offer of estate planning services in any manner influenced Mr. and

Mrs. S [REDACTED] in Diamond's sale, solicitation or negotiation of the \$67,800 in American National annuities.

231. We find Diamond failed to demonstrate an adequate understanding of his professional obligations. Diamond failed to demonstrate an understanding of his obligations to evaluate whether any specific annuity product that might address the financial situation, insurance needs or financial objectives of any particular consumer based on the consumer's suitability profile. Diamond's testimony revealed he did not possess an adequate understanding of reasonable procedures to evaluate suitable recommendations, and despite numerous opportunities to demonstrate competence, he returned his attention to his personal objective: "one of my primary focuses is to make sure they're not going to lose everything if they get sick." (Emphasis added.) (Tr. 364). Diamond only demonstrated that he was hoping to match a product to his personal objectives.

232. We find Diamond's testimony was primarily intended to minimize his violations and are so widespread so as to constitute a general business practice. Diamond's violations are repetitive, and his risk of recidivism is high.

233. We find that the Division's costs of investigation and prosecution are \$8,633.50.

II. CONCLUSIONS OF LAW

234. Iowa law grants wide discretion to a licensing authority such as the insurance commissioner. The Iowa Supreme Court has described this authority as "extremely broad." *Burns v. Board of Nursing of State of Iowa*, 528 N. W.2d 602, 604 (Iowa 1995). As the purpose of statutory licensing schemes is to protect the public health, safety and welfare of the

people of Iowa, the licensing statutes should be liberally construed. *In the matter of Michael Nulph*, Division Case No. 94689, November 7, 2017, 2017 WL 6504599 (Iowa Ins.Div.)

235. The Division has been participating in NAIC uniform insurance producer application processes for at least 15 years. 2001 Acts, ch 16, § 19, 37 and Iowa Code § 522B.5. Iowa's Licensing of Insurance Producers Law is based upon the NAIC's Producer Licensing Model Act. 2000 Proceedings of the NAIC, 3rd Quarter 7, 11, 36-45, 386, 403. Iowa is a participating state in the National Insurance Producer Registry ("NIPR") (See NIPR News Release, http://www.nipr.com/news/10th_anniversary_marked.htm September 9, 2006.) This uniform multistate licensing system is designed to be transparent among the various states.

236. The Commissioner has discretion to suspend, revoke, or refuse to issue an insurance producer license for enumerated causes. Iowa Code § 522B.11 provides, in part:

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:

a. Providing incorrect, misleading, incomplete, or materially untrue information in the license application.

b. Violating any insurance laws, or violating any regulation, subpoena, or order of the commissioner or of a commissioner of another state.

c. Obtaining or attempting to obtain a license through misrepresentation or fraud.

d. Improperly withholding, misappropriating, or converting any moneys or properties received in the course of doing insurance business.

e. Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance.

f. Having been convicted of a felony.

g. Having admitted or been found to have committed any unfair insurance trade practice or fraud.

h. Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere.

i. Having an insurance producer license, or its equivalent, denied, suspended, or revoked in any other state, province, district, or territory.

(Emphasis added.)

A. Unfair and Deceptive Acts and Practices

237. The Division charges Diamond with four separate counts of various unfair and deceptive acts and practices in violation of Iowa Code, Chapter 507B. These counts include Counts I, II, III and V. (SOC ¶¶ 69-82 and 87-92). The evidence adduced in these counts and the statutes, regulations, jurisprudence and prior guidance related to the unfair and deceptive acts and practices charged in these four counts are so tightly interwoven, so we have chosen to address these counts together.

238. The Commissioner has very broad powers to regulate trade practices in the business of insurance through administrative hearing procedures, cease and desist orders, and related relief. Iowa Code § 507B.1.

239. Iowa Code § 507B.3 provides:

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.

(Emphasis added.) *In the Matter of Newman*, No. 91936, 2017 WL 6504574 (Iowa Ins. Div., Jan. 24, 2017).

240. Iowa Code § 507B.6 provides:

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 and that a proceeding by the commissioner in respect to such method of

competition or unfair or deceptive act or practice would be in the public interest, the commissioner shall issue and serve upon such person a statement of the charges in that respect and a notice of a hearing on such charges to be held at a time and place fixed in the notice, which shall not be less than ten days after the date of the service of such notice.

241. Iowa's Insurance Trade Practices law and its prohibitions of any "unfair method of competition or any unfair or deceptive act or practice" are the result of deliberations in Congress and at the National Association of Insurance Commissioners dating back to the origins of the McCarran-Ferguson Act. 15 U.S.C. §§ 1011-1015 (2015); Iowa Code § 507B.1; *Newman, Id.*) Following the United States Supreme Court decision in *United States v. South-Eastern Underwriters Association*, 322 U.S. 533 (1944), the NAIC took up a discussion about the impact of federal regulation of insurance and proposals to reverse the effect of the Supreme Court's decision. *Mid Winter Meeting*, 1945 Nat'l Ass'n Ins. Comm'rs Proc. 26-28; *Newman, Id.* at 9. In 1945, Congress enacted McCarran-Ferguson, which includes the following:

(a) State regulation

The business of insurance, and every person engaged therein, shall be subject to the laws of the several States which relate to the regulation or taxation of such business.

(b) Federal regulation

No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such Act specifically relates to the business of insurance: *Provided*, That after June 30, 1948, the Act of July 2, 1890, as amended, known as the Sherman Act, and the Act of October 15, 1914, as amended, known as the Clayton Act, and the Act of September 26, 1914, known as the Federal Trade Commission Act, as amended [15 U.S.C.A. 41 et seq.], shall be applicable to the business of insurance to the extent that such business is not regulated by State law.

15 U.S.C. § 1012 (2015) (emphasis added).

242. As emphasized above, one of the concerns addressed in McCarran-Ferguson was the Federal Trade Commission ("FTC") jurisdiction that could conflict with state regulation. *Mid*

Winter Meeting, 1946 Nat'l Ass'n Ins. Comm'rs Proc. 132-134. The FTC jurisdiction over the business of insurance under discussion in 1944 through 1947 included Section 5 of the Federal Trade Commission Act, originally passed in 1914, and the Federal Trade Commission Act Amendments of 1938 (Wheeler-Lea Act), Pub. L. No. 75-447, § 3, 52 Stat. 111, 111 (1938). Section 5 of the FTC Act provides as follows:

Unfair methods of competition in or affecting commerce, and **unfair or deceptive acts or practices** in or affecting commerce, are hereby declared unlawful.

15 U.S.C. §45 (emphasis added).

243. After several years of discussion, the NAIC adopted the model state unfair trade act, first titled "An Act Relating to Unfair Methods of Competition and Unfair and Deceptive Acts and Practices in the Business of Insurance." *Mid Winter Meeting*, 1947 Nat'l Ass'n Ins. Comm'rs Proc. 142-143, 383-389, 392-410, 413. All of the states adopted this law. *Summer Meeting*, 1960 Nat'l Ass'n Ins. Comm'rs Proc. Vol. II, 515. The NAIC model law was specifically drawn from the concepts in Section 5 of the FTC Act, so it carried with it the broad prohibitions of unfairness and deception jurisdiction, and enumerated some unfair and deceptive acts and practices. *Mid Winter Meeting*, 1947 Nat'l Ass'n Ins. Comm'rs Proc. 142-143, 383-389, 392-410, 413. The NAIC clarified and strengthened these broad prohibitions of unfair and deceptive acts and practices in 1972. *Unfair Trade Practices (B6) Subcommittee*, 1972 Nat'l Ass'n Ins. Comm'rs Proc. Vol. I, 490-518; *Executive Committee*, 1972 Nat'l Ass'n Ins. Comm'rs Proc. Vol. I, 22. The title of this model law was changed to "Unfair Trade Practices Act" in 1990. *Plenary Session*, 1990 Nat'l Ass'n Ins. Comm'rs Proc. Vol. IA, 6, 25, 122, 146. The text of Iowa Code §§ 507B.3 and 507B.6, in light of NAIC and Congressional history, makes clear the Iowa Legislature's intent to prohibit enumerated unfair or deceptive acts or practices, but to also broadly prohibit unfair or deceptive acts or practices similar to the FTC Act prohibition. The

primary difference with the FTC Act was the states' intent to cover the business of insurance and to vest the consumer protection and market regulation responsibility in Iowa's insurance commissioner. *Newman, Id.* at 9.

244. McCarran-Ferguson's policy to avoid regulatory conflicts does not mean that federal or state jurisprudence under the FTC Act or state consumer protection laws sharing similar principles of unfairness, as well as other states' insurance trade laws, cannot be instructive on the Commissioner's responsibility and authority to determine and prohibit unfair methods of competition, and unfair or deceptive acts and practices in the business of insurance.

245. We have concluded that the prohibition of unfair acts and practices in Iowa Code § 507B.3 includes acts and practices that offend public policy as established by law and are likely to cause substantial injury to insurance purchasers. *Newman, Id.* at 10.

246. Federal decisions under the FTC Act and state consumer protection laws sharing similar principles of deception make clear the legislative intent to prohibit acts or practices that have the tendency or capacity to mislead insurers or prospective insurance purchasers. *Newman, Id.* at 9. (citing *Montgomery Ward & Co. v. FTC*, 379 F.2d 666 (7th Cir. 1967); Iowa Code § 714.16(1)(f) (2015); *State ex rel. Miller v. Vertrue, Inc.*, 834 N.W.2d 12 (Iowa 2013)). Therefore, we have concluded that the prohibition of deceptive acts and practices in Iowa Code § 507B.3 includes acts or practices that have the tendency or capacity to mislead insurers or prospective insurance purchasers. *Newman, Id.* at 9-10.

247. The broad regulatory authority in Iowa Code § 507B.3 is aided by the enumerated *per se* violations, including, but not limited to those enumerated in Iowa Code §§ 507B.4 and Chapter 522B. *Newman, Id.* at 10.

248. Additionally, in 2006, the Iowa legislature added another provision to Iowa Code Chapter 507B prohibiting recommendations of an annuity without a reasonable basis to believe the annuity is suitable. Iowa Code §507B.4B, provides:

1. A person shall not recommend to any individual the purchase, sale or exchange of any annuity contract, or any rider, endorsement, or amendment thereto, unless the person has reasonable grounds to believe that the recommendation is suitable for the individual based on a reasonable inquiry into the individual's financial status, investment objectives, and other relevant information.
2. A person engaged in the business of annuities shall establish and maintain a system to monitor recommendations made that is reasonably designed to achieve compliance with subsection 1.
3. The commissioner shall adopt rules pursuant to chapter 17A establishing procedures and standards for implementation of the suitability requirements of subsection 1.

249. Following, the enactment of Iowa Code §507B.4B, the Commissioner promulgated annuity suitability regulations in Iowa Administrative Code Chapter 191 – 15, which chapter is titled “Unfair Trade Practices.” Iowa Administrative Code rule 191 – 15.72 through 191 – 15.78. These regulations have been amended on occasion to remain current with changes made to NAIC model law #275, the Suitability in Annuity Transactions Model Regulation:

In recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the insurance producer, or the insurer where no producer is involved, shall have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to the consumer's investments and other insurance products and as to the consumer's financial situation and needs, including the consumer's suitability information, and that there is a reasonable basis to believe all of the following:

- a. The consumer has been reasonably informed of various features of the recommended annuity, such as: the potential surrender period and surrender charge; potential tax penalty if the consumer sells, exchanges, surrenders or annuitizes the annuity; mortality and expense fees; investment advisory fees; potential charges for and features of riders; limitations on interest returns; insurance and investment components; and market risk;

b. The consumer would benefit from certain features of the annuity, such as tax-deferred growth, annuitization, death benefit, or living benefit;

c. The particular annuity as a whole, the underlying subaccounts to which funds are allocated at the time of purchase or exchange of the annuity, and riders and similar product enhancements, if any, are suitable (and in the case of an exchange or replacement, the transaction as a whole is suitable) for the particular consumer based on the consumer's suitability information; and

d. In the case of an exchange or replacement of an annuity, the exchange or replacement is suitable, including taking into consideration whether:

(1) The consumer will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits (such as death benefit, living benefit, or other contractual benefits), or be subject to increased fees, investment advisory fees or charges for riders and similar product enhancements;

(2) The consumer would benefit from product enhancements and improvements; and

(3) The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding 36 months.

Iowa Administrative Code 191 – 15.75(1).

250. We conclude that Iowa Code §507B.4B, and Iowa's annuity suitability regulations in Iowa Administrative Code rule 191 – 15.72 through 191 – 15.78, provide direction to the regulated insurance business and to the Commissioner in carrying out his consumer protection responsibilities in Iowa Code §§ 507B.3 and 507B.6.

251. In addition to a cease and desist order and such additional relief as available under Iowa Code § 507B.7 for any unfair or deceptive act or practice as determined by the Commissioner, producers may also be subject to license discipline and other relief under Iowa Code §§ 522B.11(1)(b) and (g), and 522B.17.

252. In addition to the Commissioner's comprehensive regulatory authority over the business of insurance, he also licenses and regulates the conduct of securities agents, broker-dealers,

investment advisers and investment adviser representatives under the Iowa Uniform Securities Act. Iowa Code, Chapter 502.

253. The principles of suitability and supervision enacted in Iowa Code §507B.4B, share a common legal ancestry to the professional obligations of securities agents. This historical intersection can be traced to regulations promulgated by the Commissioner pursuant to the securities licensing provisions of Iowa Code § 502.412, which provide the Commissioner with authority to deny, revoke, suspend, condition or limit the license of a securities agent for willful violations of regulations and for “dishonest or unethical practices in the securities, commodities, investment, franchise, banking, finance, or insurance business within the previous ten years.” Iowa Code §502.412(4)(m).

254. The Commissioner promulgated regulations related to suitability to assist in the interpretation of the phrase “dishonest or unethical practices” in Iowa Code 502.412(4)(m). Iowa Administrative Code rule 191 – 50.16(1) is applicable to broker-dealers and other related persons other than an agent, investment adviser, investment adviser representative, or federal covered investment adviser and provides:

Dishonest or unethical business practices by any person in the securities business, other than an agent, investment adviser, investment adviser representative, or federal covered investment adviser, as prohibited pursuant to Iowa Code section 502.412(4) “m” include, but are not limited to, the following:

* * *

c. Suitability:

(1) Failing to use reasonable diligence, in regard to the opening and maintenance of every account, to know and retain the essential facts concerning every customer and concerning the authority of each person acting on behalf of such customer;

(2) Recommending a transaction or investment strategy involving a security or securities without a reasonable basis to believe that the transaction or investment strategy is suitable for the customer, based on the information obtained through the reasonable diligence of the member or associated person to ascertain the customer’s investment profile. A customer’s investment profile includes, but is not limited to, the customer’s age, other investments, financial situation and

needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information the customer may disclose to the broker-dealer or agent in connection with such recommendation;

* * *

aa. Failing to comply with any applicable provision of the FINRA Conduct Rules or any applicable fair practice or ethical standard promulgated by the SEC or by a self-regulatory organization approved by the SEC;

255. Iowa Administrative Code rule 191 – 50.16(2) makes Iowa Administrative Code rule 191 – 50.16(1)(c) and (*aa*) applicable to securities agents, where it provides:

Dishonest or unethical practices by an agent in the securities business as prohibited pursuant to Iowa Code section 502.412(4) “*m*” include, but are not limited to, the following:

* * *

i. Engaging in conduct specified in subrule 50.16(1), paragraphs “*b*” to “*f*,” “*i*,” “*j*,” “*n*” to “*q*,” “*u*,” and “*w*” to “*aa*”;

256. We conclude that the professional duties set forth in Iowa Administrative Code rule 191 – 50.16(1)(c) and (*aa*) are owed by both securities broker-dealers and securities agents.

257. In 2004, Iowa added an additional provision to the Iowa Uniform Securities Act that codified this broker-dealer and agent suitability obligation. Iowa Code § 502.501A provides:

A broker-dealer or agent shall not effect a transaction in, or induce or attempt to induce the purchase or sale of, any security in this state by means of any manipulative, deceptive, or other fraudulent scheme, device, or contrivance, fictitious quotation, or in violation of this chapter. A broker-dealer or agent shall not recommend to a customer the purchase, sale, or exchange of a security without reasonable grounds to believe that the transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer’s investment objectives, financial situation and needs, and other relevant information known by the broker-dealer.

258. Although “suitability” is not a defined term in either Iowa insurance or securities laws, we conclude the standards of conduct related to suitability underlying both securities agents and insurance producers are closely related and are both founded in the standards of conduct established by securities industry’s predecessor self-regulatory organizations to the Financial

Industry Regulatory Authority, Inc. (“FINRA”). FINRA historically was a self-regulatory organization (“SRO”) known as the National Association of Securities Dealers, Inc. As part of a restructuring of National Association of Securities Dealers, Inc. in 1996, NASD Regulation, Inc. was established as an independent subsidiary to be responsible for regulating the securities markets.

259. In 2007 the NASD and the regulatory function of the New York Stock Exchange merged to form FINRA. *SEC Gives Regulatory Approval for NASD and NYSE Consolidation*, www.sec.gov/news/press/2007/2007-151.htm . The NASD Manual and Notices to Members Conduct Rules, Section 2310, was retired and re-established as FINRA Rule 2111 (Suitability) on October 7, 2011. Rule 2111 provides, in pertinent part:

(a) A member or an associated person must have a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities is suitable for the customer, based on the information obtained through the reasonable diligence of the member or associated person to ascertain the customer's investment profile. A customer's investment profile includes, but is not limited to, the customer's age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information the customer may disclose to the member or associated person in connection with such recommendation.

Regulatory Notice 11-02, January 2011; www.finra.org/rules-guidance/rulebooks/finra-rules/2111.

260. FINRA’s suitability rule in Rule 2111 is supported by the “Know Your Customer Rule”:

Every member shall use reasonable diligence, in regard to the opening and maintenance of every account, to know (and retain) the essential facts concerning every customer and concerning the authority of each person acting on behalf of such customer.

www.finra.org/rules-guidance/rulebooks/finra-rules/2090.

261. Similarly, we conclude that Iowa Code §§ 507B.3, 507B.4 and 507B.4B, and Iowa's annuity suitability regulations in Iowa Administrative Code rule 191 – 15.72 through 191 – 15.78 may require that producers obtain sufficient facts concerning a consumer to determine the particular consumer's primary objective in purchasing a particular annuity before placing the annuity application before the consumer. But the appropriateness of a particular annuity transaction does not end with a single purpose. To the contrary, Iowa Code §§ 507B.3, 507B.4 and 507B.4B, and Iowa's annuity suitability regulations in Iowa Administrative Code rule 191 – 15.72 through 191 – 15.78 contemplate compliance with every aspect of these laws and regulations for a producer to have a reasonable basis to believe a particular annuity transaction is suitable, so as to then allow a fair and appropriate recommendation.

262. The courts have routinely held that a securities agent occupies a special status with a customer. "A securities dealer occupies a special relationship to a buyer of securities in that by his position he implicitly represents that he has an adequate basis for the opinion he renders." *Hanley v. Securities & Exchange Comm'n*, 415 F.2d 589, 596 (2d Cir. 1969). This special status imposes certain professional duties:

In summary, the standards by which the activities of each petitioner must be judged are strict. He cannot recommend a security unless there is an adequate and reasonable basis for such recommendation. He must disclose facts which he knows and those readily ascertainable. By his recommendation he implies that a reasonable investigation has been made and this his recommendation rests on the conclusions based on such investigation.

Hanley, supra, at 597. Although the arena of knowledge and skill differ, we conclude that an insurance professional or producer owes no less care to an annuity customer than we would expect of the securities agents we regulate. We conclude that Iowa Code §507B.4B and Iowa Administrative Code rule 191 – 15.72 through 191 – 15.78 were enacted to codify these same principles apply to an insurance producer in recommending an annuity.

263. Prior to the NAIC's adoption of model law #275, the Suitability in Annuity Transactions Model Regulation, the term "suitability" had been defined in a number of different ways:

- "adapted, appropriate, apt, fit, proper (40A Words and Phrases 189).
- "(f)or purposes of licensing requirements for insurance [producers], "suitability" constitutes a combination of trustworthiness and competence." (40A Words and Phrases, at Supp 95 (citing *Deluty v. Commissioner of Insurance*, 386 N.E.2d 730, 732, 7 Mass.App.Ct. 88 (1979)).
- "Suitable is defined as appropriate and fitting." *Id.*, at 96, citing *Morgan v. Morgan*, 366 N.Y.S. 2d 977, 981, 81 Misc.2d 616 (1975)).

264. We conclude that the foregoing attempts to define "suitability" provide useful shape to the term in Iowa Code §507B.4B and Iowa Administrative Code rule 191 – 15.72 through 191 – 15.78. We conclude that a suitable recommendation includes the producer having formed a reasonable basis to believe the recommended annuity addresses the financial situation, insurance needs and financial objectives of the particular consumer in light of the consumer's suitability profile. A suitable annuity must be fit for the particular consumer's financial situation, insurance needs and financial objectives.

265. But the insurance producer's "reasonable basis" obligation is not a search for a single purpose, but to the contrary, must involve a broad inquiry and an evaluation of the totality of the consumer's financial situation, insurance needs and financial objectives. To adhere to the standards of conduct and achieve the desired outcome of a recommendation particularly suited to the particular customer, the producer is required to act with reasonable care, skill and diligence throughout a process of informing the consumer about reasonable options and learning the particular consumer's financial situation, insurance needs and financial objectives.

266. Iowa's suitability regulations give context to the reasonableness of a producer's basis for believing a particular annuity is suitable by establishing as an element the producer has

reasonably informed the consumer of the various features of the annuity in reasonable detail. Iowa Administrative Code rule 191 – 15.75(1)(a). A producer’s reasonable basis for belief an annuity is suitable for a particular consumer requires absolute good faith and fair dealing. The phrase “the consumer has been reasonably informed” in Iowa Administrative Code rule 191 – 15.75(1)(a) – as part of a suitability process – sets forth an obligation to inform the consumer, to provide information understandable to the consumer, all to reasonably conclude the consumer comprehends the information. Iowa Code §§ 507B.3, 507B.4 and 507B.4B, and Iowa Administrative Code rules 191 – 15.72 through 191 – 15.78 contemplate that the producer’s efforts to inform the consumer will be in good faith and fully consistent with standards of fair dealing. As the producer’s recommendation requires an informed consumer and this element must be realized as part of a recommendation, not after the recommendation. The purpose of an informed consumer is not realized as a final act or “papering” of the file after “a salesman” has forcefully and persuasively made a sales pitch. A consumer informed of the various features of a considered annuity is a very early step in the suitability process.

267. The Division presented evidence of a free lunch “seminar” offered by Diamond on April 7, 2015, at the Elks Lodge in Waterloo, Iowa and attended by Mr. and Mrs. W■■■■. The Division presented evidence of another “seminar” on October 18, 2016, at the Starlight Best Western in Fort Dodge that was attended by Mr. and Mrs. G■■■■. Mrs. V■■■■ and Mr. and Mrs. S■■■■ attended another one of Diamond’s seminars the next day on October 19, 2016, also in Fort Dodge. We found that even though Diamond held these free lunch and dinner “seminars” many times and in many locations – in Diamond’s own words – “our job at that point is to divest them and put everything **in the control of the spouse at home** and then buy a Medicaid – compliant SPIA.” (Emphasis added.) Mr. and Mrs. W■■■■ were both at home. Mr. and Mrs.

G [REDACTED] were both at home. Mrs. V [REDACTED] was a widow. Mr. and Mrs. S [REDACTED] were both in the home.

268. First, Diamond failed to offer any credible evidence that Mr. and Mrs. W [REDACTED] understood this basic premise of his claims that certain annuities would provide protection of “life savings from loss due to catastrophic illness or an extended stay.” The same can be said for Mr. and Mrs. G [REDACTED]. Mrs. V [REDACTED] had some understanding, but this claimed “basis” was inapplicable to her as a widow. Mrs. S [REDACTED] also had some understanding of the purported justification for certain annuities, but made it clear that her conscience would not allow her to adopt Diamond’s claim as her own financial objective.

269. We conclude that Diamond failed to show any good faith compliance with his obligation under Iowa Administrative Code rule 191 – 15.75(1)(a) to inform Mr. and Mrs. W [REDACTED], Mr. and Mrs. G [REDACTED], Mrs. V [REDACTED], or Mr. and Mrs. S [REDACTED] as to the annuities’ features, nor how certain annuities would provide protection of “life savings from loss due to catastrophic illness or an extended stay” in their individual particular circumstances. Diamond did not confirm in conformance with good faith, standards of fair dealing, or industry procedures the consumers’ understanding or identification of this “life savings” basis for the appropriateness of the recommended annuity. The annuity suitability forms are not at all credible as discussed below, but even so, the only reference anywhere in those documents to this concept is Mr. and Mrs. W [REDACTED] Annuity Suitability questionnaire for National Western that states the insurer does not warrant that the contract “will comply with Medicaid.” Although we have found and will follow with legal conclusions concerning many other unfair and deceptive practices, the single failure by Diamond to receive and identify from each consumer reasonable confirmation that they actually comprehended his claimed Medicaid spenddown strategy as their own financial

objective after having been reasonably informed, demonstrates the unreasonableness of this entire “sales pitch” as an actual basis for the recommendation.

270. Iowa’s suitability regulations give additional context to the reasonableness of a producer’s basis for believing a particular annuity is suitable by establishing as a second element the obligation of the producer to determine the “consumer would benefit from certain features of the annuity, such as tax-deferred growth, annuitization, death benefit, or living benefit.” Iowa Administrative Code rule 191 – 15.75(1)(b).

271. Insurance companies issuing fixed annuities and fixed indexed annuities may claim an exemption from the Securities Act of 1933 and from federal securities regulation under Section 989J of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, so long as certain conditions are met. Pub. L. 111-203, Title IX, § 989J, July 21, 2010, 124 Stat. 1949. The policy behind this section passed by Congress was to confirm state insurance regulatory responsibility because the insurance features and insurance benefits of fixed and fixed index annuities are the central quality of these annuities, not the growth or return on asset features. Federal securities regulation also recognizes state insurance regulatory responsibility over fixed and fixed index annuities and that these annuities are within the section 3(a)(8) exemption of the Securities Act of 1933 (15 U.S.C. 77c(a)(8)), provided that the insurer assumes the investment risk and the contract is not marketed primarily as an investment. 17 CFR §230.151. (See also, *American Equity Investment Life Ins. Co. v. Securities and Exchange Commission*, 613 F.3d 166 (D.C. Cir. 2009).)

272. The professional obligation of the insurance producer in Iowa Administrative Code rule 191 – 15.75(1)(b) recognizes several important insurance features of annuities, and consistent

with the 17 CFR §230.151 “safe harbor,” requires that the insurance features be prominent in the producer’s recommendation and the consumer’s decision to purchase these products.

273. Iowa Administrative Code rule 191 – 15.75(1)(c) gives additional structure to the reasonableness of a producer’s basis for believing a particular annuity is suitable by emphasizing the breadth of considerations in making a suitable recommendations. This provision requires a reasonable basis to believe “[t]he particular annuity as a whole, the underlying subaccounts ..., and riders and similar product enhancements, if any, are suitable for the particular consumer based on the consumer’s suitability information.” This provision confirms a high duty of an insurance professional to diligently, carefully and skillfully evaluate how a considered transaction in its totality will match the particular situation, insurance needs and financial objectives of the particular consumer.

274. Finally, Iowa Administrative Code rule 191 – 15.75(1)(d) emphasizes the special considerations that should be given when an insurance producer recommends an exchange or replacement of an annuity with a different annuity. This provision essentially establishes an obligation of an insurance professional to diligently, carefully and skillfully evaluate how in balancing the positive and the negative attributes found in the benefits, enhancements, riders, costs, and fees of the newly proposed annuity are more advantageous as a whole than the existing annuity. This provision confirms the high duty an insurance professional to diligently, carefully and skillfully evaluate how the recommended annuity with its differing positives and negatives specifically provides net advantages that better match the particular financial situation, insurance needs and financial objectives of the particular consumer.

275. Diamond did not observe the obligations of Iowa Administrative Code rule 191 – 15.75(1)(b), (c) or (d) in good faith, nor did he observe standards of fair dealing. We find that

the suitability forms that Diamond should have been able to offer as a profile of each consumer's financial situation, insurance needs and financial objectives are wholly unreliable because they were never reviewed, evaluated, considered or adopted by the consumers as their own assertions. In this proceeding, they are Diamond's and Guetschow's self-serving hearsay statements. For a supervising insurer with their independent legal obligations under Iowa Administrative Code rule 191 – 15.75(6), the statements are a fraud.

276. It is uncontroverted that Diamond regularly asked older Iowans to sign "blank" suitability forms, annuity applications and 1035 exchange requests, so he could fill them in later. This practice is not only unfair in that it clearly violates public policy as false attestations, false insurance applications and potentially insurance fraud, Diamond's practice wholly undermines the effectiveness of insurance carriers' supervision obligations under Iowa Administrative Code rule 191 – 15.75(6). It reduces the information content on the form to nothing more than Diamond's own self-serving information to be manipulated to "get it through suitability" supervision. (Tr. 443-444). We conclude this practice is likely to harm numerous older Iowans beyond the specific circumstances proven by the evidence in this matter. Diamond's practice of taking advantage of older Iowans in this manner and as uncovered during the hearing is appalling and we conclude the practice of asking older Iowans to sign "blank" suitability forms, annuity applications and 1035 exchange requests is unconscionable, and unfair. The failure by Diamond to individually, diligently, carefully and skillfully confirm that each particular consumer would benefit from certain features of the annuity, such as tax-deferred growth, annuitization, death benefit, or living benefit, demonstrates the unreasonableness and the dishonesty of Diamond's purported basis for any claimed belief that the recommended annuities would address the particular consumers' financial situation, insurance needs and financial objectives. The failure

by Diamond to individually, diligently, carefully and skillfully confirm that the particular annuity as a whole and its riders and similar product enhancements were also suitable for the particular consumer based on the consumer's suitability information also demonstrates the unreasonableness and the dishonesty of Diamond's purported basis for any claimed belief that the recommended annuities would address the particular consumers' financial situation, insurance needs and financial objectives.

277. The failure by Diamond in the circumstances involving a replacement to individually, diligently, carefully and skillfully evaluate how in balancing the positives and the negatives in benefits, enhancements, riders, costs, and fees of the newly proposed annuity are more advantageous as a whole than the existing annuity or to evaluate how the recommended annuity with its differing positives and negatives specifically provides net advantages that better match the particular financial situation, insurance needs and financial objectives of the particular consumer also demonstrates the unreasonableness and the dishonesty of Diamond's purported basis for any claimed belief that the recommended annuities would address the particular consumers' financial situation, insurance needs and financial objectives.

278. Iowa Code §§ 507B.3, 507B.4 and 507B.4B, and Iowa Administrative Code rules 191 – 15.72 through 191 – 15.78 apply to the business of insurance. We conclude that the diligence, care and skill of an insurance producer in an annuity transaction generally do not require analysis or consideration of any products outside the authority or license of the producer. The comprehensive state insurance producer and insurance company regulatory framework found in Iowa insurance statutes and regulations, along with various related federal statutes and regulations, makes this clear. However, we also conclude under these frameworks of functional regulation, unless the insurance producer is also appropriately trained and licensed with

appropriate governmental and self-regulatory organizations regulating securities, the producer is prohibited from analyzing or considering any products outside the authority or license of the insurance producer.

279. Diamond has incorporated a business named "Diamond and Associates Retirement Planning Services, Inc.," and held himself out as a "Senior Tax Counsel," and "Senior Education Counsel." He has represented that he is associated with "Retirement Planning Services, Inc."

We conclude that Diamond's representations that he is a senior tax counsel and senior education counsel are deceptive, as Diamond is neither qualified, nor licensed to practice tax law in the state of Iowa. We conclude, as proven by Mr. G [REDACTED] testimony and other evidence, that Diamond's representation that he associated with "Retirement Planning Services, Inc.," along with these other so-called professional titles are deceptive, unless accompanied by a detailed explanation and consumer comprehension, as the titles have the tendency and capacity to mislead older Iowans to believe Diamond is a certified financial planner in violation of Iowa Code § 507B.3.

280. Federal tax law impacts the tax treatment of certain exchanged insurance policies, including annuities. 26 U.S.C. § 1035, which is titled "Certain exchanges of insurance policies," provides as follows:

- a) General rules. – No gain or loss shall be recognized on the exchange of—
 - (1) a contract of life insurance for another contract of life insurance or for an endowment or annuity contract or for a qualified long-term care insurance contract;
 - (2) a contract of endowment insurance (A) for another contract of endowment insurance which provides for regular payments beginning at a date not later than the date payments would have begun under the contract exchanged, or (B) for an annuity contract, or (C) for a qualified long-term care insurance contract;
 - (3) an annuity contract for an annuity contract or for a qualified long-term care insurance contract; or

(4) a qualified long-term care insurance contract for a qualified long-term care insurance contract.

(b) Definitions. – For the purpose of this section –

- (1) Endowment contract. – A contract of endowment insurance is a contract with an insurance company which depends in part on the life expectancy of the insured, but which may be payable in full in a single payment during his life.
- (2) Annuity contract. – An annuity contract is a contract to which paragraph (1) applies but which may be payable during the life of the annuitant only in installments. For purposes of the preceding sentence, a contract shall not fail to be treated as an annuity contract solely because a qualified long-term care insurance contract is a part of or a rider on such contract.
- (3) Life insurance contract. – A contract of life insurance is a contract to which paragraph (1) applies but which is not ordinarily payable in full during the life of the insured. For purposes of the preceding sentence, a contract shall not fail to be treated as a life insurance contract solely because a qualified long-term care insurance contract is a part of or a rider on such contract.

(c) Exchanges involving foreign persons. – To the extent provided in regulations, subsection (a) shall not apply to any exchange having the effect of transferring property to any person other than a United States person.

281. Federal regulation provides additional guidance. 26 C.F.R. § 1.1035–1, which is titled “Certain exchanges of insurance policies,” provides as follows:

Under the provisions of section 1035 no gain or loss is recognized on the exchange of:

- (a) A contract of life insurance for another contract of life insurance or for an endowment or annuity contract (section 1035(a)(1));
- (b) A contract of endowment insurance for another contract of endowment insurance providing for regular payments beginning at a date not later than the date payments would have begun under the contract exchanged, or an annuity contract (section 1035(a)(2)); or
- (c) An annuity contract for another annuity contract (section 1035(a)(3)), but section 1035 does not apply to such exchanges if the policies exchanged do not relate to the same insured. The exchange, without recognition of gain or loss, of an annuity contract for another annuity contract under section 1035(a)(3) is limited to cases where the same person or persons are the obligee or obligees under the contract received in exchange as under the original contract. This section and section 1035 do not apply to transactions involving the exchange of an

endowment contract or annuity contract for a life insurance contract, nor an annuity contract for an endowment contract. In the case of such exchanges, any gain or loss shall be recognized. In the case of exchanges which would be governed by section 1035 except for the fact that the property received in exchange consists not only of property which could otherwise be received without the recognition of gain or loss, but also of other property or money, see section 1031(b) and (c) and the regulations thereunder. Such an exchange does not come within the provisions of section 1035. Determination of the basis of property acquired in an exchange under section 1035(a) shall be governed by section 1031(d) and the regulations thereunder.

282. The favorable tax treatment is given for transactions when the old insurance policy is exchanged for a new policy. The consumer cannot receive a check and apply the proceeds to the purchase of a new insurance policy. Federal law provides that the consumer may make a tax-free exchange from: (1) a life insurance policy to another life insurance policy; (2) a life insurance policy to an annuity; or (3) an annuity for another annuity, but contingent on a number of other factors.

283. Diamond filled out an American National non-qualified 1035 request in Mrs. V [REDACTED] transaction in which Diamond recommended to Mrs. V [REDACTED] that she purchase an American National annuity by liquidating her Edward Jones securities portfolio. In doing so, Diamond gave questionable tax advice by describing the transaction as a 1035 Exchange. The failure by Diamond to individually, diligently, carefully and skillfully confirm that a purchase by Mrs. V [REDACTED] of an American National annuity with funds from liquidating her Edward Jones securities portfolio would come within the provisions of 26 U.S.C. § 1035 also demonstrates the unreasonableness and the dishonesty of Diamond's purported basis for any claimed belief that the recommended annuities would address Mrs. V [REDACTED] financial situation, insurance needs and financial objectives.

284. As stated above, under these frameworks of functional regulation, unless the insurance producer is also appropriately trained and licensed with appropriate governmental and self-regulatory organizations, the producer is prohibited from analyzing or considering any products outside the authority or license of the producer. We directly addressed this issue of when an annuity recommendation relates to liquidation of a consumer's securities holdings, requiring securities expertise, appropriate training, and often state licensure, when we issued regulatory guidance in the form of a 2011 bulletin. IA Bulletin No. 2011-4, 2011 WL 2623310 (June 24, 2011). In Iowa Bulletin 2011-04, we announced clear limits on "insurance-only" producers making any reference to securities as these individuals do not possess the requisite training, qualification or licensure to transact securities business or to render investment advice. As we license and regulate investment advisers, investment adviser representatives, broker-dealers and securities agents under Iowa's Uniform Securities Act, Iowa Code, Chapter 502, this regulatory guidance is applicable to both industries. IA Bulletin No. 2011-4, *Id.*

285. Iowa Bulletin No. 2011-4 provided that an insurance producer, who is not also qualified and licensed in securities, is specifically prohibited from "[r]ecommending the liquidation of specific securities, or identifying specific securities that could be used to fund an annuity or life insurance product." We conclude that an insurance producer, who is not also qualified and licensed in securities, and fails to exercise reasonable care to avoid giving this advice, or fails to exercise reasonable care to avoid a reasonable consumer perception that he is giving this advice, not only violates the investor protection purposes found in Iowa's Uniform Securities Act, Iowa Code, Chapter 502, but this conduct also presents a substantial risk of harm to consumers. We, therefore, conclude that this practice is unfair and we determine that it violates Iowa Code § 507B.3.

286. Diamond engaged in this unfair practice, as the evidence revealed that Diamond used the required insurance suitability process of gathering an inventory of Mrs. V [REDACTED] investment and insurance assets, in part, to identify assets to liquidate and to fund an annuity he was selling. Diamond's securities advice not only identified the portfolio of securities to be liquidated, Diamond rendered his opinion that the securities were "no good" and "not worth anything" in an effort to persuade Mrs. V [REDACTED] to liquidate her diversified stock portfolio at Edward Jones. Diamond clearly did not exercise any care to avoid giving securities advice.

287. If the annuity recommendation involves an insurance replacement, an insurance-only agent has the necessary insurance expertise to evaluate the suitability of the insurance replacement. But if the annuity recommendation could involve liquidation of a banking financial instrument, a security, or any other non-insurance asset, or may have tax consequences, an insurance producer, who is not also qualified and licensed in securities, violates the prohibitions in Iowa Bulletin 2011-4, if he fails to exercise reasonable care to avoid a reasonable consumer perception that he is giving securities advice. An insurance producer, who is not also qualified and licensed in securities, but offers any comment, opinion or advice on the suitability of the securities liquidation will be held to the level of diligence, care and skill reasonable for a securities professional. As such, the failure by Diamond to individually, diligently, carefully, skillfully and legally confirm that the liquidation of Mrs. V [REDACTED] diversified stock portfolio at Edward Jones to fund the American National annuity was suitable for Mrs. V [REDACTED] based on her suitability information demonstrates the unreasonableness and the dishonesty of Diamond's purported basis for any claimed belief that the American National annuity along with the securities liquidations would address Mrs. V [REDACTED] financial situation, insurance needs and financial objectives.

288. We further conclude Diamond engaged in this unfair practice of identifying specific securities that could be used to fund the National Western annuity and the American National annuity in his dealings with Mr. and Mrs. W [REDACTED]. The failure by Diamond to individually, diligently, carefully, skillfully and legally confirm that the liquidation of Mr. and Mrs. W [REDACTED] securities holdings at Wells Fargo Advisors, LLC, Stifel Nicolaus & Co., and Hancock Securities to fund the National Western annuity was suitable for Mr. and Mrs. W [REDACTED] based on their suitability information demonstrates the unreasonableness and the dishonesty of Diamond's purported basis for any claimed belief that the National Western annuity along with the securities liquidations would address Mr. and Mrs. W [REDACTED] financial situation, insurance needs and financial objectives. The failure by Diamond to individually, diligently, carefully, skillfully and legally confirm that the liquidation of Mr. W [REDACTED] securities holdings with The Brethren Church retirement plan to fund the American National annuity was suitable for Mr. and Mrs. W [REDACTED] based on their suitability information also demonstrates the unreasonableness and the dishonesty of Diamond's purported basis for any claimed belief that the American National annuity along with the securities liquidations would address Mr. and Mrs. W [REDACTED] financial situation, insurance needs and financial objectives.

289. We further conclude that Diamond's intentional and simultaneous recommendations with two insurance companies and his failure to describe the simultaneous recommendations on both annuity suitability forms intentionally concealed from both National Western and American National, Diamond's recommendations to concentrate 81.5% of Mr. and Mrs. W [REDACTED] liquid net worth into annuity contracts with liquidity restrictions is an unfair and deceptive act in violation of Iowa Code §§ 507B.3, 507B.4 and 507B.4B, and Iowa Administrative Code rules 191 – 15.72 through 191 – 15.78.

290. From all of the evidence and findings, we conclude Diamond did not have reasonable basis to believe that the recommended transactions with Mr. and Mrs. W [REDACTED] were suitable based on their particular financial situations, insurance needs and financial objectives, thus engaging in unfair acts and practices in violation of Iowa Code §§ 507B.3, 507B.4 and 507B.4B, and Iowa Administrative Code rules 191 – 15.72 through 191 – 15.78.

291. From all of the evidence and findings, we conclude Diamond did not have reasonable basis to believe that the recommended transactions with Mr. and Mrs. G [REDACTED] were suitable based on their particular financial situations, insurance needs and financial objectives, thus engaging in unfair acts and practices in violation of Iowa Code §§ 507B.3, 507B.4 and 507B.4B, and Iowa Administrative Code rules 191 – 15.72 through 191 – 15.78.

292. From all of the evidence and findings, we conclude Diamond did not have reasonable basis to believe that the recommended transactions with Mrs. V [REDACTED] were suitable based on her particular financial situations, insurance needs and financial objectives, thus engaging in unfair acts and practices in violation of Iowa Code §§ 507B.3, 507B.4 and 507B.4B, and Iowa Administrative Code rules 191 – 15.72 through 191 – 15.78.

293. From all of the evidence and findings, we conclude Diamond did not have reasonable basis to believe that the recommended transactions with Mr. and Mrs. S [REDACTED] were suitable based on their particular financial situations, insurance needs and financial objectives, thus engaging in unfair acts and practices in violation of Iowa Code §§ 507B.3, 507B.4 and 507B.4B, and Iowa Administrative Code rules 191 – 15.72 through 191 – 15.78.

294. Pursuant to the Commissioner's rule making authority, Iowa Administrative Code Chapter 15—Unfair Trade Practices establishes certain minimum standards and guidelines of conduct by identifying unfair acts or practices in the business of insurance to be prohibited by

Iowa Code chapter 507B. Under Iowa Administrative Code rule 191 – 15.8(2)(b), a producer shall not “execute a transaction for an insurance customer without authorization by the customer to do so.”

295. We conclude that Diamond attempted to execute an annuity transaction in the name of Mrs. V [REDACTED], including the liquidation of her securities portfolio at Edward Jones without her authorization, thus engaging in an unfair practice in violation of Iowa Code § 507B.3, 507B.4, 507B.12 and Iowa Administrative Code rule 191 – 15.8(2)(b).

296. As stated earlier in this decision, the prohibition of deceptive acts and practices in Iowa Code § 507B.3 includes acts or practices that have the tendency or capacity to mislead insurers or prospective insurance purchasers. In addition to this broad prohibition, Iowa Code § 507B.4 enumerates specific acts and practices as unfair or deceptive. Iowa Code § 507B.4(3) provides, in part:

The following are hereby defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

n. Misrepresentation in insurance applications. Making 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.

297. From all of the evidence and findings, and without repeating the factual details here, we conclude that Diamond made untrue and misleading statements in twelve instances concerning annual income, estimated net worth, liquid net worth, client instructions and other material information in suitability forms, annuity applications and 1035 exchange requests, all which had the tendency and capacity to mislead insurers and were for the purpose of obtaining commissions in violation of Iowa Code §§ 507B.3 and 507B.4(3)(n).

298. Diamond's general business practice of intentionally and knowingly obtaining consumer signatures as false attestations on "blank" suitability forms, annuity applications and 1035 exchange requests and later supplying untrue and misleading statements concerning their annual income, estimated net worth, liquid net worth, client instructions and other material information in suitability forms, annuity applications and 1035 exchange requests, demonstrates that Diamond should have known and in fact, did know his acts and practices violated of Iowa Code §§ 507B.3 and 507B.4(3)(n).

299. Diamond's deceptive scheme of untrue and misleading statements concerning annual income, estimated net worth, liquid net worth, client instructions and other material information in suitability forms, annuity applications and 1035 exchange requests, also proves that Diamond was intentionally and knowingly making recommendations to purchase annuities without having a reasonable basis to believe the transactions were suitable based upon the particular financial situation, insurance needs and financial objectives of Mr. and Mrs. W■■■■, Mr. and Mrs. G■■■■, Mrs. V■■■■, and Mr. and Mrs. S■■■■, respectively, and that Diamond should have known and in fact, did know his acts and practices violated of Iowa Code §§ 507B.3, 507B.4 and 507B.4B, and Iowa Administrative Code rules 191 – 15.72 through 191 – 15.78.

300. Iowa Code § 505.8(10) provides:

The commissioner may, after a hearing conducted pursuant to chapter 17A, assess fines and penalties; assess costs of investigation, or proceeding; order restitution; or take other corrective action as the commissioner deems necessary and appropriate to accomplish compliance with the laws of the state relating to all insurance business transacted in the state.

301. Iowa Code § 507B.7 provides, in pertinent part:

If, after hearing, the commissioner determines that a person has engaged in an unfair method of competition or an unfair or deceptive act or practice, the commissioner shall reduce the findings to writing and shall issue and cause to be served upon the person charged with the violation a copy of such findings, an

order requiring such person to cease and desist from engaging in such method of competition, act, or practice, and the commissioner may at the commissioner's discretion order any one or more of the following:

- a. Payment of a civil penalty of not more than one thousand dollars for each act or violation of this subtitle, but not to exceed an aggregate of ten thousand dollars, unless the person knew or reasonably should have known the person was in violation of this subtitle, in which case the penalty shall be not more than five thousand dollars for each act or violation, but not to exceed an aggregate penalty of fifty thousand dollars in any one six-month period. If the commissioner finds that a violation of this subtitle was directed, encouraged, condoned, ignored, or ratified by the employer of the person or by an insurer, the commissioner shall also assess a penalty to the employer or insurer.

302. As to Counts I, II and III, Diamond's unfair and deceptive acts and practices as detailed above have been in violation of Iowa Code §§ 507B.3, 507B.4, 507B.4B, and 522B.11 and Iowa Administrative Code rules 191 – 15.8(2)(b) and 191 – 15.75, subjecting Diamond to suspension or revocation of his insurance producer license, the imposition of civil penalties, an order requiring Diamond to cease and desist from engaging in such unfair and deceptive acts and 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 and 505.8.

303. As stated earlier in this decision, the prohibition of unfair acts and practices in Iowa Code § 507B.3 includes acts or practices that offend public policy as established by law and are likely to cause substantial injury to insurance purchasers. *Newman, Id.* at 10. In addition to this broad prohibition, Iowa Code § 507B.4 enumerates specific acts and practices as unfair or deceptive.

Iowa Code § 507B.4(3)(i) provides, in part:

i. Rebates.

- (1) Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any contract of life insurance, life annuity or accident and health insurance, or agreement as to such contract other than as plainly expressed in the contract issued thereon, or paying or allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement

to such insurance, or annuity, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends or other benefits thereon, or **any valuable consideration or inducement whatever not specified in the contract; or giving, or selling, or purchasing or offering to give, sell, or purchase as inducement to such insurance or annuity or in connection therewith,** any stocks, bonds, or other securities of any insurance company or other corporation, association, or partnership, or any dividends or profits accrued thereon, **or any thing of value whatsoever not specified in the contract.**

(Emphasis added.)

304. We conclude that the prohibition of Iowa Code § 507B.4(3)(i) requires that the producer intended the gift or other value given to influence the consumer to purchase the annuity, or the gift or other value given had the effect of influencing the consumer to purchase the annuity.

305. As to Count V, we conclude that the Division did not carry its burden of proof.

**B. Providing Incorrect, Misleading, Incomplete, and
Materially Untrue Information in a License Application**

306. We now take up the charges in Count VI in the amended statement of charges. As stated earlier in this decision, in addition to authorizing licensing sanctions for violating insurance laws or regulation or being found to have committed an unfair trade practice or fraud, Iowa Code § 522B.11(a) authorizes the Commissioner to suspend or revoke an insurance producer's license for "[p]roviding incorrect, misleading, incomplete, or materially untrue information in the license application."

307. From all of the evidence and findings, and without repeating the factual details here, we conclude that Diamond provided incorrect, misleading, incomplete, or materially untrue information in the license applications in seven instances, subjecting his producer license to suspension or revocation under Iowa Code § 522B.11(a).

308. Diamond's general business practice of intentionally and knowingly authorizing Guetschow to submit answers over a required attestation by Diamond, but without his actual

review of the information and in reckless disregard for the correctness, completeness and truthfulness of the information in the license applications, in light of Diamond's lengthy experience as an insurance producer with licensure in a number of states, demonstrates that Diamond should have known that his acts and practices violated of Iowa Code § 522B.11(a).

C. Failure to Report Administrative Actions

309. We now take up the charges in Count VII in the amended statement of charges. As stated earlier in this decision, Iowa Code § 522B.11(b) authorizes the Commissioner to suspend or revoke an insurance producer's license for violating insurance laws or regulation.

310. Iowa Code § 522B.16 provides:

1. An insurance producer shall report to the commissioner any administrative action taken against the insurance producer in another jurisdiction or by another governmental agency in this state within thirty days of the final disposition of the matter. This report shall include a copy of the order, consent to the order, and other relevant legal documents.

311. In addition to ordering suspension or revocation of the producer's license under § 522B.11(b), the Commissioner may order a producer to cease and desist his violations and award civil penalties under Iowa Code § 522B.17.

312. From all of the evidence and findings, and without repeating the factual details here, we conclude that Diamond failed to timely report administrative action taken against him in other jurisdictions in two instances, subjecting his producer license to suspension or revocation under Iowa Code § 522B.11(a) and to cease and desist orders and civil penalties under Iowa Code §§ 522.17, 507B.3 and 507B.7.

D. License Revocation in Another Failure to Report Administrative Actions

313. We now take up the charges in Count VII in the amended statement of charges. As stated earlier in this decision, Iowa Code § 522B.11(i) authorizes the Commissioner to suspend or

revoke an insurance producer's license for [h]aving an insurance producer license, or its equivalent, denied, suspended, or revoked in any other state, province, district, or territory.”

314. From all of the evidence and findings, and without repeating the factual details here, we conclude that Diamond had an insurance license revoked by the state of Wisconsin, subjecting his producer license to suspension or revocation under Iowa Code § 522B.11(i).

E. Using Fraudulent and Dishonest Practices and Demonstrating Untrustworthiness

315. We now take up the charges in Count IV in the amended statement of charges. As stated earlier in this decision in addition to authorizing licensing sanctions for violating insurance laws or regulation or being found to have committed an unfair trade practice or fraud, Iowa Code § 522B.11(h) authorizes the Commissioner to suspend or revoke an insurance producer's license for “[u]sing fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere.”

316. We have previously concluded that although “fraudulent **practice**” is not defined under Iowa Code § 522B. 11(1)(h), it is not limited to common law fraud or deceit. *In the matter of Trina M. Gomez*, No. 98904, 2019 WL 1971255, at 4. (Iowa Ins. Div., Jan. 16, 2019). We concluded in *Gomez* 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. *Gomez*, at 4.

317. Trustworthiness in the context of an insurance producer license is the confidence worthy of a trust relied upon by the public when dealing with a licensed individual, who is acting under

the imprimatur of a state of Iowa insurance professional license. *In the matter of Tommy McCellan-Bey*, No. 956516, 2018 WL 8220766, at 5 (Iowa Ins. Div., Oct. 12, 2018).

318. “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.” *McCellan-Bey, Id.* at 5; (Citing *Bankers Life & Casualty Co. v. Alexander*, 242 Iowa 364, 373; 45 N.W.2d 258, 263 (Iowa 1950).

319. The word “dishonest” has plain and ordinary meaning. Yet, it can be defined as “characterized by lack of truth, honesty, or trustworthiness.” Dictionary by Merriam-Webster, <https://www.merriam-webster.com/>.

320. From all of the evidence and findings, and without repeating the factual details here, we conclude that Diamond’s violations of law detailed above; the untrue and misleading statements concerning annual income, estimated net worth, liquid net worth, client instructions and other material information in suitability forms, annuity applications and 1035 exchange requests; the unfair annuity recommendations made without a reasonable basis to believe the transactions were suitable for the particular consumers, including Diamond’s recommendation to Mr. G [REDACTED] to replace his single premium universal life product with an American National annuity; the incorrect, misleading, incomplete and materially untrue information related to both Diamond’s 2014 Uniform Application and the 2016 Uniform Renewal Application; and the intentionally fabricated justifications to annuity recommendations both during the transaction and issuance process and in Diamond’s testimony at the hearing, are individually and collectively dishonest

practices and demonstrate Diamond's untrustworthiness, subjecting his producer license to suspension or revocation under Iowa Code § 522B.11(h).

III. ORDERS

IT IS THEREFORE ORDERED that Diamond's Iowa insurance producer license is revoked pursuant to Iowa Code §§ 507B.7 and 522B.11 effective immediately.

IT IS FURTHER ORDERED that Diamond pursuant to Iowa Code §§ 505.8(10), 507B.7, 522B.11 and 522B.17 is prohibited from selling, soliciting or negotiating any annuity or other insurance in this state, and from advising, counseling or servicing any person in this state with respect to the benefits, advantages, or disadvantages of any annuity or other insurance in this state for ten years from the date of this order at which time Diamond may apply for an insurance producer in this state. This order should not be construed as a conclusion that Diamond will or should receive a license at that time.

IT IS FURTHER ORDERED that Diamond pursuant to Iowa Code §§ 507B.6, 507B.7, 522B.11 and 522B.17, is prohibited from engaging in any unfair or deceptive act or practice, including, but not limited to any of the following, uses, acts or practices:

1. Making any annuity recommendation without a reasonable basis to believe that the proposed transaction is suitable for the particular consumer based on the consumer's particular financial situations, insurance needs and financial objectives in violation of Iowa Code §§ 507B.3, 507B.4 and 507B.4B, and Iowa Administrative Code rules 191 – 15.72 through 191 – 15.78;

2. Making any untrue and misleading statements concerning annual income, estimated net worth, liquid net worth, client instructions and any other material information in suitability forms, annuity applications and 1035 exchange requests in violation of Iowa Code §§ 507B.3 and 507B.4;
3. Making any representation concerning professional designation, training or certification that has the capacity or tendency to mislead consumers that Diamond possesses training, knowledge, qualification or professional licensure that he does not, or has the capacity or tendency to mislead consumers to believe Diamond is a certified financial planner, an investment adviser, or a licensed attorney or counsel; and
4. Providing incorrect, misleading, incomplete, and materially untrue information in an insurance producer license application.

IT IS FURTHER ORDERED that Diamond pursuant to Iowa Code § 522B.16 is prohibited from engaging in failing to timely report within 30 days any administrative action taken against him in other jurisdictions.

IT IS FURTHER ORDERED that pursuant to Iowa Code §§ 507B.7 Diamond shall within 45 days of this order pay \$20,000.00 to the state of Iowa in civil penalties for the violations of making recommendations to purchase annuities without having a reasonable basis to believe the transactions were suitable based upon the particular financial situation, insurance needs and financial objectives of Mr. and Mrs. W■■■■, Mr. and Mrs. G■■■■, Mrs. V■■■■, and Mr. and Mrs. S■■■■, respectively, when Diamond should have known, and did know, his

acts and practices violated of Iowa Code §§ 507B.3, 507B.4 and 507B.4B, and Iowa Administrative Code rules 191 – 15.72 through 191 – 15.78. Payment shall be made by check payable to the state of Iowa and received by the Iowa Insurance Division within forty-five days of this Order.

IT IS FURTHER ORDERED that pursuant to Iowa Code §§ 507B.7 for all other violations found herein Diamond shall within 45 days of this order pay \$22,000.00 to the state of Iowa in additional civil penalties. This payment shall be made with the payment of the civil penalty ordered above.

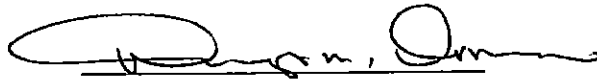
IT IS FURTHER ORDERED that pursuant to Iowa Code § 505.8 Diamond shall within 45 days of this order pay \$8,860 to the state of Iowa to be distributed to Mr. and Mrs. G [REDACTED] as restitution. This payment shall be paid with the payment of the civil penalty ordered above.

IT IS FURTHER ORDERED that pursuant to Iowa Code § 505.8 Diamond shall within 45 days of this order pay \$6,713.93 to the state of Iowa to be distributed to Mr. and Mrs. W [REDACTED] as restitution. This payment shall be paid with the payment of the civil penalty ordered above.

IT IS FURTHER ORDERED that pursuant to Iowa Code § 505.8 Diamond shall within 45 days of this order pay \$8,633.50 to the state of Iowa for costs of investigation and prosecution. This payment shall be paid with the payment of the civil penalty ordered above.

IT IS FURTHER ORDERED that all documents and items admitted as evidence at hearing are received under seal to protect the personally identifiable and confidential information of Diamond's customers who testified in this matter. Once any such information is redacted, the documents may be released upon appropriate request. This decision is under seal, but the clerk is ordered to prepare a redacted version of this decision for publication protecting the identities of Mr. and Mrs. W■■■■, Mr. and Mrs. G■■■, Mrs. V■■■■ and Mr. and Mrs. S■■■■.

Dated this 23rd day of October, 2019.



DOUGLAS M. OMMEN
Iowa Insurance Commissioner

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, during the time of your licensure suspension or following revocation, 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 §§ 507B.7 and 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 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. For example, a final cease and desist order issued to a licensed insurance producer may subject the insurance producer to a securities registration revocation, suspension or other disciplinary action. Further notice is given that the Iowa Insurance Division may review this order for a potential license revocation or disciplinary action.

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 23rd day of October, 2019, the foregoing Findings of Fact, Conclusions of Law and Orders of Revocation, to Cease and Desist, and Other Relief was delivered via email to all parties of record:

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Iowa Insurance Division