



BEFORE THE IOWA INSURANCE COMMISSIONER

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IN THE MATTER OF	)	Division Case No. 103128
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BROCK R. DEVRIES,	)	<b>FINDINGS OF FACT,</b>
NPN 16975065	)	<b>CONCLUSIONS OF LAW,</b>
DOB 06/08/XXXX	)	<b>AND FINAL ORDERS</b>
	)	
Respondent.	)	
	)	

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**DECISION**

Respondent Brock R. DeVries’ (“DeVries”) nonresident insurance producer license is suspended for a period of one year, effective on the date of this order. DeVries is ordered to cease and desist from soliciting or selling insurance in this state, ordered to pay \$5,000.00 in civil penalties due to his actions of unlawfully submitting applications to convert term life insurance policies for consumers without their authorization, making false statements on or relative to applications for insurance, and using dishonest practices or demonstrating untrustworthiness and incompetence in the business of insurance.

On January 21, 2020, the Iowa Insurance Division (“Division”) filed a statement of charges against DeVries for violations of Iowa Code chapters 507B and 522B as well as Iowa Administrative Code chapter 15. An amended statement of charges was filed on February 12, 2020 (“Statement of Charges”). A notice of hearing was issued by the Commissioner on February 17, 2020, setting this matter for a prehearing conference on May 12, 2020 and for a hearing on May 21, 2020. DeVries filed an answer on March 25, 2020.

The hearing was continued on two occasions. The prehearing conference was held on November 2, 2020. The Division and DeVries agreed to and submitted a joint stipulation of facts and exhibits (“Stipulations”) on November 10, 2020. The hearing was then held on

November 12 – 13, 2020. The hearing was held virtually before the Commissioner of Insurance, Douglas Ommen, using the video platform Webex. The Division was represented by Enforcement Bureau attorney Johanna Nagel. DeVries was present and represented by attorney Alex Wonio of Des Moines, Iowa.

The Division's Statement of Charges against Devries arranged its allegations into four Counts: (1) Misrepresentation on Insurance Application, (2) Improper Sales Tactics, (3) Forgery, and (4) Dishonest Practices.

At the hearing, the Commissioner provided instructions to the parties on procedural matters, an opening statement was made by the Division, and evidence was received. At the hearing, the following witnesses were called to testify by the Division: Russell Gibson, Complaint Analyst with the Division; Mike Wehmeyer, Internal Investigative Consultant with Farm Bureau; David Sullivan, Complaint Analyst with the Division; and the Respondent Brock DeVries. The Division also submitted documentary evidence. DeVries called Mr. J.V.H. as a witness, and submitted documentary evidence. [The names of consumers are held under seal and are indicated by initials in this decision to protect privacy.]

Following the hearing, the parties submitted proposed findings of fact and conclusions of law.

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 M. Ommen, directly and through his designees, administers and enforces Iowa Code chapter 507B—Insurance Trade Practices, Iowa Code

chapter 522B—Licensing of Insurance Producers, and Iowa Administrative Code chapter 15—Unfair Trade Practices pursuant to Iowa Code § 505.8. (Amended Statement of Charges (“SOC”) ¶1; and Answer ¶1)

2. DeVries is an individual with a last-known residence of 210 South Canterbury Circle, North Sioux City, South Dakota 57049. (Stipulations ¶3). DeVries has a last-known business address of 4022 Morningside Avenue, Sioux City, Iowa 51106. (SOC ¶2; Answer ¶2; and Ex. 1).

3. DeVries applied for a nonresident insurance producer license with the Division by submitting through the National Insurance Producer Registry a Uniform Application for Individual Producer License (“Uniform Application”).

4. In submitting the Uniform Application, DeVries designated the Commissioner as an agent for service of process. (SOC ¶6; Answer ¶6; Stipulations ¶1).

5. DeVries is and has been licensed in the state of Iowa as a nonresident insurance producer since March 18, 2014. The Division issued DeVries a license as a nonresident insurance producer and assigned to him National Producer Number 16975065. (SOC ¶3 and 7; Answer ¶3 and 7; Ex. 1; and Stipulations ¶2).

6. DeVries is owner and president of Brock DeVries Financial, LLC, an Iowa limited liability corporation with a home office of 4022 Morningside Avenue, Sioux City, Iowa 51106. (SOC ¶8; Answer ¶8; Ex. 1; and Stipulations ¶4). DeVries testified that he does business as BD Financial Group, but offers no financial services. (Tr. 337).

7. DeVries was appointed as a producer for Farm Bureau Life Insurance Company between May 1, 2014 and July 25, 2019. (SOC ¶9; Answer ¶10; Ex. 1; and Stipulations ¶5).

8. DeVries was appointed as a producer for SAFECO Insurance Company of America and SAFECO Insurance Company of Illinois on September 24, 2019. (SOC ¶10; Answer ¶3; Ex. 1; and Stipulations ¶6).

9. Pursuant to Iowa Code § 505.28, DeVries 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)

10. The facts in this case involve eight separate insurance customers and transactions involving the conversion of term life insurance policies to indexed universal life policies (hereafter “IUL”) during the period of January 13, 2017 through April 26, 2019. There are similarities in these transactions, but not all of the similarities are circumstantial evidence of intentional conduct.

11. Each of the separate circumstances involve the use of electronic signatures attributed to the customer on policy applications and other related documents. The use of electronic signatures that can be easily generated by keystrokes do not carry any presumption of authenticity and are prone to abuse. The use of electronic signatures on insurance applications by insurers without significant supervisory systems to ensure the integrity of the insurance applicant’s certification to the accuracy and completeness of contents will only serve as an invitation for unfair and deceptive practices, and subsequent litigation when disputes arise.

12. The central issue in these circumstances arises from the impossibility of reviewing the electronic signatures as used on the insurance applications in this case to determine authenticity. The responsibility to correct this uncertainty lies squarely in the offices of Farm Bureau Life Insurance Company. When contested cases are made necessary to resolve disputes over consumers’ authorization, knowledge, consent and certifications in life insurance policy

applications by keystroke electronic signatures, supervision has failed. This failure has led to a lengthy hearing before the Commissioner for the primary purpose of determining whether eight of DeVries' customers had read and decided to submit an IUL policy application. After listening to hours of witness recordings, reviewing thousands of pages of transcripts and documents, we render a decision, but give notice that a contested case should not be required to determine the genuineness of a signature that carries the weight of importance as great as an individual's life insurance protection.

13. This matter was investigated first by Farm Bureau – primarily by Investigator Mike Wehmeyer. (Tr. 156-157). The matter was then investigated by Analysts David Sullivan and Russell Gibson of the Division. (Tr. 17-19, 237-240).

#### 1. Consumer Mr. D.C.

14. The first event that the Division offered as grounds for discipline against DeVries was a conversion of a term life policy owned by Mr. D.C. to an IUL policy on January 13, 2017. (Ex. 8 and 9). DeVries was acquainted with Mr. D.C. through a recreational softball team. (Tr. 3; Ex. 25, 26, page 3). At all times pertinent hereto, Mr. D.C. was a resident of the state of Iowa. (Tr. 54-55).

15. Mr. D.C. applied on or about January 7, 2015, for a Farm Bureau 10-year term life policy in the amount of \$500,000.00. (Tr. 54-55; Ex. 8, pages 4 and 6).

16. The email address for Mr. D.C. on the term life policy application was [First Name]way04@gmail.com. (Tr. 240-241; Ex. 2, page 8; Ex. 8, page 10; Ex. 26, page 3). Mr. D.C. reported to Analyst David Sullivan during a telephone interview that this email address was correct and Mr. D.C. would “still use it” as of the date of the analyst's interview. (Tr. 6-10; Ex.

25, time 1:35-1:45; Ex. 26, page 3). Pursuant to a stipulation, the Division offered both Exhibit 25, the recording of Sullivan's interview of Mr. D.C., and Exhibit 26, a transcript of the interview. (Tr. 6-10). Under the stipulation, DeVries waived foundation objections, but did lodge a standing hearsay objection. Exhibits 25 and 26 are evidence of Mr. D.C.'s out-of-hearing statements offered for the truth of the matters asserted and not under oath. Exhibits 25 and 26 are unmistakably objectionable hearsay. Although DeVries lodged standing hearsay objections (Tr. 6-10), we over-rule these general objections. DeVries did not specify any objections when the content of the interview was presented. (Tr. 248-254). However, a waiver of foundation objections by stipulation cannot supply unknown facts. Although we have scoured the record, we cannot find the date Analyst Sullivan conducted his first telephone interview of Mr. D.C., so we have no evidence of the date that the email address as discussed by Analyst Sullivan and Mr. D.C. was still in use.

17. It is uncontroverted that Mr. D.C. either applied himself or authorized an electronic signature be applied to the application for the term life policy on January 7, 2015. DeVries also applied an electronic signature as agent to the life policy application. (Tr. 59-60; Ex. 8, pages 9-10). We find as uncontroverted that Mr. D.C. also either applied himself or authorized his electronic signatures on an EFT Authorization, a HIPAA Compliant Authorization form, an Underwriting/Suitability questionnaire, and an Iowa HIV Antibody test form. (Tr. 59-60; Ex. 8, pages 11-18).

18. Mr. D.C. and DeVries both signed by hand the term life policy receipt, dated February 25, 2015. (Ex 8, page 38).

19. Farm Bureau amended the term life policy on February 25, 2015, to reduce coverage to \$250,000.00 because of Mr. D.C.'s health rating. The monthly premium amount was \$60.35. (Tr. 56; Ex. 8, pages 28, 35, and 39).

20. Although the amendment appears to be signed by Mr. D.C. on February 25, 2015, he told a Division analyst that Mr. D.C. had "always thought it [his insurance policy] was 500 [thousand dollars]." (Tr. 57, 252; Ex. 8, pages 28 and 39; Ex. 24; Ex. B, page 2).

21. On or about January 13, 2017, DeVries completed and submitted an application for Mr. D.C. to convert the existing term life policy into an IUL life policy with a \$100,000 death benefit. (Tr. 59-61, 250-252; Ex. 9; Ex. 25; Ex. 26, pages 3-6).

22. During the first of two telephone interviews with Analyst Sullivan, Mr. D.C. reported that although he could recall the life insurance purchase in 2015, he did not recall ever discussing or authorizing DeVries in 2017 to convert the term policy to an IUL policy. (Ex 25, time 1:57-2:32; Ex. 26, page 3-4.) But the Division's analyst was also told by Mr. D.C. "I mean, I'm not saying that he – that he – that we didn't – but I don't remember – I don't remember talking to Brock [DeVries] about much. And especially changing anything." (Ex. 25, time 2:30-2:46; Ex. 26, page 4).

23. The Division urges us to find that Mr. D.C. did not authorize DeVries to convert his insurance to a \$100,000 IUL policy in January 2017, yet it appears to rely heavily on Mr. D.C.'s hearsay statements to Analyst Sullivan during a telephone interview for proof of the central facts. As for probative value, we are able to weigh a recording of the hearsay statement and are not required to rely on Analyst Sullivan's memory for this event. Yet, Mr. Sullivan's telephone interview with Mr. D.C. was conversational, not formal. The Division failed to establish the date on which the interview took place. DeVries did waive most objections to this and all other

exhibits, but we do need to consider the circumstances surrounding Mr. D.C.'s out-of-hearing statements – including their recency to the events described – to determine their probative value. In the interview, Mr. D.C. refers to not recalling events, and we are left to speculate to the meaning of those statements. As the questioning by Analyst Sullivan was informal, it is not clear if Mr. D.C. was advised of the importance of his statements and the need for them to be clear, accurate statements of what actually happened, free of speculation.

24. When DeVries converted Mr. D.C.'s term life policy to the IUL policy, DeVries directed that only \$100,000.00 of the term policy was to be converted and that the remaining term amount was to be terminated. (Ex. 9, pages 4 and 7). Due to Mr. D.C.'s equivocal statements in the telephone interview and uncertainty over the timing of the statements, the evidence is inconclusive on the issue of whether DeVries recommended, or whether Mr. D.C. followed a recommendation to terminate most of Mr. D.C.'s term policy. DeVries' own statements to the Division analysts does indicate DeVries was unaware that he had terminated the balance of the term policy. (Tr. 250-251, 290-291; Ex. 26, page 8; Ex. 20, time 2:24:00-2:25:53; Ex. 21, pages 148-150). Despite a significant reduction in policy amount, we do find the conversion resulted in an increased monthly premium of \$100.00. (Ex. 9, pages 2 and 7).

25. The application for conversion to an IUL policy bears electronic signatures purporting to be Mr. D.C.'s, dated January 13, 2017, and purporting to be genuine, that Mr. D.C. has subsequently reported he does not recall authorizing. (Tr. 250-254, 290-291; Ex. 26, page 8). The conversion related documents, including the IUL policy application, the EFT Authorization Form, the Replacement Notice, and the Illustration, all bear electronic signatures purporting to be Mr. D.C.'s signatures. (Ex. 9). Mr. D.C. stated that he did not recall signing, electronically or



otherwise, any documents related to the conversion to an IUL insurance policy. (Tr. 250-252; Ex. 26, page 10).

26. DeVries told Analysts Sullivan and Gibson in an interview that Mr. D.C. authorized the application of the IUL insurance policy and DeVries “pushed” the electronic button for Mr. D.C.’s electronic signature. (Ex. 20, page 156-158). DeVries’ testimony at the hearing on the issue of electronic signatures on Mr. D.C.’s IUL application and other related documents is muddled – at best – due to the leading questions asked by his counsel. (Tr. 387-388).

27. We note the Division did not offer any evidence from Farm Bureau that would establish the genuineness of the electronic signatures, which in turn would be presumed to be Mr. D.C.’s certification to the truth, accuracy, completeness and understanding of all of the information in the documents.

28. Despite thousands of pages of documents and witness statements introduced as evidence by the Division, we find the evidence to be inconclusive on the issue of whether Mr. D.C. fully reviewed the IUL policy application, the EFT Authorization Form, the Replacement Notice, and the Illustration, and thereby consented to his electronic signatures with the intent to certify to the truth, accuracy, completeness and understanding of all information contained in these documents.

29. The Division failed to carry its burden of proof concerning its allegations that DeVries committed any violation of law or engaged in any other disqualifying conduct in connection with a conversion of Mr. D.C.’s term life insurance policy to an IUL life insurance policy.

## 2. Consumer Mr. J.BL.

30. The second customer experience that the Division offered as grounds for discipline against DeVries was a conversion of a term life policy owned by Mr. J.BL. to IUL policies on April 22, 2017 and January 5, 2018. (Ex. 5, 6 and 7). DeVries was acquainted with Mr. J.BL. through a recreational softball team. (Ex. 22, 23, page 98). At all times pertinent hereto, Mr. J.BL. was a resident of the state of Iowa. (Tr. 43; Ex. 5, 6, and 7).

31. Mr. J.BL. purchased on or about October 6, 2014, a Farm Bureau 10-year term life insurance policy in the amount of \$150,000.00. (Tr. 43; Ex. 5). The premiums for this Farm Bureau term life policy were to be paid monthly by EFT in the amount of \$30.11 for the first month and \$27.74 thereafter. (Tr. 45; Ex. 5, pages 2 and 11).

32. The email address for Mr. J.BL. on the term life policy application was [First Name]J[Last Name]11@gmail.com. (Tr. 43-44, 180; Ex. 5, page 10; Ex. 2, page 8). This email address was not valid and Mr. J.BL. stated on two occasions that this email address on the term life policy is not, and has never been, a valid email address for him. (Tr. 180; Ex. 2, page 8).

33. It is uncontroverted that Mr. J.BL. either applied himself or authorized an electronic signature be applied to the application for the term life policy on October 6, 2014. DeVries also applied an electronic signature as agent to the life policy application. (Tr. 44-45, 196-97, 286-87; Ex. 5, pages 9-10). Mr. J.BL. also either applied himself or authorized his electronic signatures on an EFT Authorization, a HIPAA Compliant Authorization form, an Underwriting/Suitability questionnaire, and an Iowa HIV Antibody test form. (Tr. 44-45; Ex. 5, pages 11-18). Therefore, we presume he certified the correctness of the invalid email address on this form. Careless or not, Mr. J.BL. by his signature, certifies to the truthfulness, accuracy, completeness and understanding of the contents.

34. Mr. J.BL. and DeVries both signed by hand the term life policy receipt, dated December 1, 2014. (Ex 5, page 30).

35. On or about April 22, 2017, DeVries submitted an application to partially convert Mr. J.BL.'s existing term life policy into an IUL policy. (Tr. 46-47; Ex 6, page 11). The value of the IUL policy was for \$100,000.00. Despite only being a partial conversion, the conversion resulted in additional monthly premium of \$107.90. (Tr. 46-47; Ex. 6, pages 2, 7, and 49).

36. The Division urges us to find that Mr. J.BL. did not authorize DeVries to partially convert his insurance to a \$100,000 IUL policy in April 2017, yet it appears to rely heavily on Mr. J.BL.'s hearsay statements to Investigator Wehmeyer during a telephone interview to prove the central facts. We do not have a recording of the interview. The Division did not establish the date of the telephone interview. A review of Mr. Wehmeyer's report and Mr. Wehmeyer's testimony of the interview with Mr. J.BL. – although not clarified by the Division – suggest some of Mr. J.BL.'s statements may have been made to another Farm Bureau investigator and then relayed to Mr. Wehmeyer, rendering the statements double hearsay. (Tr.179-180; Ex. 2, page 8). Although DeVries lodged standing hearsay objections (Tr. 6-10), we over-rule these general objections. DeVries did not specify any objections when the content of the interview was presented. (Tr. 179-180). As for probative value, we are required to rely on Investigator Wehmeyer's memory for detailing Mr. J.BL.'s statements, possibly the memory and veracity of the other investigator, and we are unable to directly assess Mr. J.BL.'s statements. In summary, this evidence alone would be insufficient in light of the Division's burden of proof. However, as found below, DeVries admitted to the central issues related to Mr. J.BL. during a subsequent investigative interview.

37. The email address for Mr. J.BL. on the April 2017, IUL policy application was JJ.Last Name]@gmail.com. This email address is not, and has never been, a valid email address for Mr. J.BL. (Tr. 180, 285-286; Ex. 2, page 8; Ex. 6, page 11; Ex. 23, page 100). Although we only have circumstantial evidence of fraudulent intent, we do find DeVries recklessly created email addresses for Mr. J.BL.'s insurance policy applications with intentional disregard for the truthfulness or accuracy of the information. (Tr. 286, Ex. 23, page 103).

38. The application for partial conversion to an IUL policy bears electronic signatures purporting to be Mr. J.BL.'s, dated April 22, 2017, and purporting to be genuine, that Mr. J.BL. has subsequently reported he did not authorize. (Tr. 47-48; Ex. 2, page 9; Ex. 6, page 9). The EFT Authorization Form, the Replacement Notice, and the Policy Illustration, also dated April 22, 2017, purport to bear Mr. J.BL.'s electronic signatures. (Ex. 6, page 9). One record indicates the electronic signatures were applied at 10:17 p.m. (Ex. 6, page 13; Ex. 23, page 106, 117). Mr. J.BL. made a statement to one of the Farm Bureau investigators during a telephone interview that "indicated he never met with Agent DeVries this late at night and never signed any documents like this." (Ex. 2, page 9).

39. Under questioning by the Farm Bureau investigator on July 17, 2019, DeVries admitted that Mr. J.BL. was not present when DeVries submitted the IUL policy application at the office at 10:17 p.m. (Ex. 23, page 116-117.) Under intensive questioning by the Farm Bureau investigator, DeVries did maintain that Mr. J.BL. had been in his office earlier to apply his electronic signature. (Ex.23, page 109). Under examination by the Division's counsel at the hearing, DeVries testified with the following explanation:

He [Mr. J.BL.] was in my office a few times, but sometimes I'll leave it like – would leave the app in my queue if I needed more pertinent information, like a birth date of a beneficiary, or something like that. And then they would get me the information, I would submit it through my queue. So have him e-signing the

app already, except if it --- it if didn't have some pertinent -- pertinent information, I would leave it in my queue and then submit it later, so that might be the timing thing that's been brought up in these cases.

(Tr. 355-356).

40. During questioning by his own counsel, DeVries did offer testimony about the purported electronic signature of Mr. J.BL. on the IUL policy application:

Counsel: Mr. [J.BL.] had a conversion life insurance policy in 2017 and then a different-- a second one in 2018. Did you fill out and dishonestly submit conversion policies for [J.BL.]?

DeVries: No.

Counsel: Did you meet with [J.BL.]?

DeVries: Yes.

Counsel: And specifically relative to these conversion policies?

DeVries: Yes.

Counsel: Where would you meet with Mr. [J.BL.]?

DeVries: In my office.

Counsel: Face-to-face?

DeVries: Yes.

Counsel: You would go through the application, the conversion application?

DeVries: Yes.

Counsel: Answer any questions he might have?

DeVries: Yes.

Counsel: He made increased conversion payments for a period of several months. Did he ever contact you and ask why his life insurance monthly payments had quadrupled or more?

DeVries: No.

Counsel: Did he ever complain to you that these life insurance payments had quadrupled or more?

DeVries: He did not.

Counsel: Is there any question in your mind Mr. [J.BL.] knew, wanted, filled out the conversion application with you?

DeVries: Yes.

Counsel: And you're certain that those meetings took place, he wanted these conversions, and approved them all?

DeVries: Yes.

Counsel: You would disagree with any suggestion that Mr. [J.BL.]'s conversions were part of a scheme you concocted to defraud Farm Bureau or these consumers?

DeVries: It was not.

(Tr. 384-386). We give very little credibility to DeVries' very short answers prompted in response to the leading questions of his own attorney, particularly given the fact that he appears to have been so well conditioned to answer "yes" to his lawyer that he admitted to having a question about whether Mr. J.BL. wanted the policy. Regardless, we find that Mr. J.BL. was not in DeVries' office at 10:17 p.m. when the IUL policy application and the other related documents purportedly bearing Mr. J.BL.'s electronic signatures were submitted to Farm Bureau.

41. Understandably, in this matter the parties have been focusing on whether the consumers asked that the IUL policies be issued as the ultimate issue in deciding whether an electronic signature on the IUL policy application was authorized. This narrow focus ignores the importance of each of the questioned documents.

42. Mr. J.BL. – and every other life insurance applicant – has an obligation to carefully consider the contents of the document and to be truthful and complete in the answers submitted

as part of a life insurance application. The “representations and acknowledgement statement” covers an entire page. (Ex. 6, page 9). The consequences for a consumer’s misrepresentation or omission of material information in a life insurance application can be denial of claim or cancellation of the contract. In the certification, the consumer states “[b]y signing this Application, I represent that the statements and answers in all parts of this Application and Supplements thereto are true and complete to the best of my knowledge and belief...” (Ex., page 9). Consumer protection laws offer certain rights concerning electronic fund transfers and Mr. J.BL.’s acknowledgement of the information on the EFT Authorization form is required. (Ex. 6, page 12). Policy Illustrations for IUL policies are designed to explain certain features of the life insurance policy, so the consumer’s signature acknowledges not only the receipt of the illustration, but an understanding of the non-guaranteed elements illustrated in the complex policy contract.

43. DeVries’ own statements to investigators, analysts and his in-hearing testimony do not alter our finding that DeVries applied on April 27, 2017, electronic signatures that DeVries intended to be relied upon as authentic, genuine certifications by Mr. J.BL. DeVries intended the electronic signatures be relied on as the applicant’s certifications to the truthfulness of the information on the IUL policy application and related documents, when in fact, Mr. J.BL. was not present in the office to so certify, because it was 10:17 p.m. at night. (Tr. 355-356; Ex. 6, page 30). We conclude that since Mr. J.BL. was not present, then he did not authorize the electronic signatures certifying the truthfulness, accuracy, completeness and understanding of the document’s contents. (Tr. 47-48, 180-81; Ex 2, page 9; Ex. 20, time 1:50:37-1:51:56; Ex. 21, pages 114-115; Ex. 22, time 1:31:39-1:32:58, 1:40:11-1:40:55; Ex. 23, pages 106-107, 116-117). This finding is supported by the related finding that DeVries recklessly provided an email

address for Mr. J.BL. without regard for the truthfulness or accuracy of the address. (Tr. 180, 285-286; Ex. 2, page 8; Ex. 6, page 11; Ex. 23, pages 100-103). As stated earlier, although DeVries lodged standing hearsay objections (Tr. 6-10), we over-rule these objections and find Mr. J.BL.'s out-of-court statements that he had not authorized DeVries to certify on Mr. J.BL.'s behalf the truthfulness of the information on the IUL policy and the related documents to be credible in light of all of the evidence, especially admissions made by DeVries – statements that are credible and recognized as such under the well-known exception to the hearsay rule.

44. The policy delivery receipt was signed on January 5, 2018—9 months after the April 2017 IUL policy was issued. (Tr. 48-49; Ex. 6, page 52).

45. After the \$444 of conversion credit obtained by the conversion to the April 2017 IUL policy and another \$29 in unused premium was used, monthly payments of \$107.90 began to be automatically withdrawn from Mr. J.BL.'s bank account on August 22, 2017. Four monthly payments were automatically withdrawn, but then in December 2017, the payment could no longer be collected. (Tr. 53-54, 182-83; Ex. 6, pages 2, 8-9).

46. On or about January 5, 2018, DeVries submitted a second application to convert the remaining \$50,000.00 of term life policy into a second IUL policy. (Tr. 50-52; Ex 7). With a \$200.88 conversion credit, the January 2018 IUL required an additional monthly premium of \$63.33 with the first payment due on March 29, 2018. (Tr. 51; Ex. 7, pages 2, 7 and 41).

47. DeVries listed a third inaccurate email address for Mr. J.BL. on the January 2018 IUL application. (Ex. 7, page 11; Ex. 23, page 100). Mr. J.BL. confirmed on two occasions that the email address listed by DeVries on the January 2018 IUL policy application is not, and has never been, a valid email address for him. (Tr. 52-53, 180; Ex. 2, page 8).



48. After the conversion credit obtained due to the conversion to the January 2018 IUL policy had expired, Mr. J.BL.'s January 2018, IUL immediately had payment issues, including insufficient funds and account closure. (Tr. 53-54, 182-83; Ex. 7, page 2; Ex. 35).

49. The evidence shows that Farm Bureau made several attempts to redraft payments for both the April 2017 IUL and the January 2018 IUL in March – April, 2018. When a Farm Bureau customer service representative communicated by email with DeVries in April – May, 2018, about the payment issues, DeVries represented to the Farm Bureau customer service representative that he spoke on more than one occasion with Mr. J.BL. about the issues and that Mr. J.BL. authorized Farm Bureau to redraft the payment. (Ex. 2, pages 8-9; Ex. 35). However, Mr. J.BL. reported to Farm Bureau investigators on or about July 10, 2019, that he was never contacted by DeVries regarding the insufficient fund issues and never provided DeVries authorization to redraft his account. (Tr. 182-83; Ex. 2, page 8).

50. DeVries had submitted two EFT Authorization forms, dated March 8, 2018, one associated with the April 2017, IUL policy and the other associated with the January 2018 IUL policy. Mr. J.BL. reviewed both EFT forms and reported to Farm Bureau investigators that neither signature purporting to be his, was actually signed by his own hand. (Tr. 180; Ex. 2, page 9). DeVries told the Farm Bureau investigators that he did not sign Mr. J.BL.'s name on these documents. (Exhibit 23, pages 124-128).

51. DeVries did admit to the Farm Bureau investigators that he knowingly listed false email addresses for Mr. J.BL. (Ex. 22, time 1:26:58-1:27:18, 1:27:55-1:28:30, 1:29:00-1:29:26, 1:51:45-1:51:50; Ex. 23, pages 100-102). DeVries explained to the Farm Bureau investigators that he did this because Mr. J.BL. "doesn't have an email." (Ex. 23, page 100).

52. DeVries was paid a total of \$1,162.06 in commissions for the two conversions of Mr. J.B.L.'s term policy. (Ex. 38, page 2).

### 3. Consumers Mr. C.O. and Ms. K.O.

53. The third customer experience that the Division offered as grounds for discipline against DeVries was a partial conversion of a term life policy owned by Ms. K.O. (under her prior name "Ms. K.C.") to an IUL policy on October 18, 2017. (Ex. 5, 6 and 7). DeVries was acquainted with Mr. C.O. through Farm Bureau. (Ex. 20, 21, page 194). As of October 18, 2017, Mr. C.O. and Mrs. K.O. were married and were residents of the state of Iowa. (Tr. 70; Ex. 12 and 13).

54. On behalf of the Division, Analyst Sullivan testified that he interviewed Mr. C.O., but Mr. Sullivan did not offer any foundation on when or where this interview occurred. (Tr. 298-299). After reviewing the entirety of the record, [including a subsequent interview of DeVries (Tr.194-200)] we find the statements of Mr. C.O. to be the only evidence offered by the Division to support the allegation that DeVries applied electronic signatures on October 18, 2017, purportedly to be that of Ms. K.O. as her certification of the truth, accuracy, completeness and understanding of all information contained in the documents.

55. Although DeVries lodged standing hearsay objections (Tr. 6-10), we over-rule these general objections for admissibility. DeVries did not specify any objections when the content of the interview was presented. (Tr. 298-299). The Division offered hearsay – and in this circumstance – a recording of Analyst Sullivan's interview of Mr. C.O. We found no foundation for the interview as the time and place of the event are unknown. We were able to listen to and make some limited assessment of Mr. C.O.'s credibility. However, Mr. C.O. stated in the interview that Ms. K.O. did authorize her signatures to the insurance documents for the October

18, 2017, transaction. While the Division appeared to dispute the validity of an email address and answers to health questions, the Division failed to prove that DeVries used any deception or unfair practice or even a lack of professional competence to obtain Ms. K.O.'s electronic signatures. It is not known from Mr. C.O.'s statement [or DeVries' admissions during other interviews] whether Ms. K.O. fully reviewed the relevant IUL policy application, the Daily Living Rider, the EFT Authorization Form, the HIPAA Compliant health questionnaire, the Iowa HIV form, or the Illustration, and thereby consented to her electronic signatures with the intent to certify the truth, accuracy and understanding of all information contained in the documents.

56. We note the Division did not offer any evidence from Farm Bureau that would establish the genuineness of the electronic signatures, which in turn would be presumed to be Ms. K.O.'s certification to the truth, accuracy, completeness and understanding of all of the information in the documents.

57. The Division failed to carry its burden of proof concerning its allegations that DeVries committed any violation of law or engaged in any other disqualifying conduct in connection with a conversion of Ms. K.O.'s term life insurance policy to an IUL life insurance policy.

#### 4. Consumer Mr. T.M.

58. The fourth customer experience that the Division offered as grounds for discipline against DeVries was a conversion of a term life policy owned by Mr. T.M. to an IUL policy on March 23, 2018. (Ex. 10 and 11). DeVries was acquainted with Mr. T.M., having attended high school together. (Tr. 292). Mr. T.M. was a resident of the state of Iowa. (Tr. 62; Ex. 10 and 11).

59. On behalf of the Division, Analyst Sullivan testified that he interviewed Mr. T.M., but did not offer any foundation on when or where this event occurred. (Tr. 257-260). Although

Analyst Sullivan mentions during his testimony about this interview that he is referring to “notes” of this interview, we do not believe any documentation or contemporaneous notes of the interview were introduced as evidence. (Tr. 260). After reviewing the record, we find that the hearsay testimony was the only evidence offered by the Division to support the allegation that DeVries applied electronic signatures on March 23, 2018, purportedly to be that of Mr. T.M. as his certification of the truth, accuracy, completeness and understanding of all information contained in the documents.

60. Although DeVries lodged standing hearsay objections (Tr. 6-10), we over-rule these general objections for admissibility. DeVries did not specify any objections when the content of the interview was presented. (Tr. 257-260). However, the Division offered a mix of hearsay and double hearsay – with Analyst Sullivan’s reference to his notes and possibly refreshed memory of an interview of Mr. T.M. The customer’s memory on that unknown date is unknown. Although Analyst Sullivan is a trustworthy and credible individual, the Division gave us no reason to trust his memory, nor any ability to judge Mr. T.M.’s veracity with access to his own words.

61. We note the Division did not offer any evidence from Farm Bureau that would establish the genuineness of the electronic signatures, which, in turn, would be presumed to be Mr. T.M.’s certification to the truth, accuracy, completeness and understanding of all of the information in the documents.

62. Despite thousands of pages of documents and witness statements introduced as evidence by the Division, we find the evidence to be inconclusive on the issue of whether Mr. T.M. fully reviewed the relevant IUL policy application, the EFT Authorization Form, and the Illustration,

and thereby consented to his electronic signatures with the intent to certify the truth, accuracy and understanding of all information contained in the documents.

63. The Division failed to carry its burden of proof concerning its allegations that DeVries committed any violation of law or engaged in any other disqualifying conduct in connection with a conversion of Mr. T.M.'s term life insurance policy to an IUL life insurance policy.

#### 5. Consumer Mr. J.V.H

64. The fifth customer experience that the Division offered as grounds for discipline against DeVries was a conversion of a term life policy owned by Mr. J.V.H. to an IUL policy on March 30, 2018. (Ex. 18 and 19). DeVries was acquainted with Mr. J.V.H. and described him as a close family friend. (Ex. 20, 21, page 117). At all times pertinent hereto, Mr. J.V.H. was a resident of the state of Iowa. (Tr. 85; Ex. 18 and 19).

65. On behalf of DeVries, Mr. J.V.H. testified that he authorized a conversion of his term insurance policy to an IUL policy on March 30, 2018. (Tr. 439).

66. While we find the evidence to be close on the issue of whether Mr. J.V.H. fully reviewed the relevant IUL policy application, the EFT Authorization Form, the HIPAA Compliant health questionnaire, the Daily Living Rider, the Iowa HIV form, or the Illustration, and thereby either electronically signed the documents himself or consented to his electronic signatures on March 30, 2018, with the intent to certify the truth, accuracy and understanding of all information contained in the documents. Nevertheless, we find for DeVries on this issue.

67. The Division failed to carry its burden of proof concerning its allegations that DeVries committed any violation of law or engaged in any other disqualifying conduct in connection with a conversion of Mr. J.V.H.'s term life insurance policy to an IUL life insurance policy.

6. Consumer Mr. R.C.

68. The sixth customer experience that the Division offered as grounds for discipline against DeVries was a conversion of a term life policy owned by Mr. R.C. to an IUL policy on April 26, 2018. (Ex. 16 and 17). DeVries was very well acquainted with Mr. R.C. as they attended high school together and DeVries described Mr. R.C.'s brother as his best friend. (Ex. 22, 23, page 13). At all times pertinent hereto, Mr. R.C. was a resident of the state of Iowa. (Tr. 19; Ex. 16 and 17).

69. On or about February 23, 2015, Mr. R.C. purchased a Farm Bureau 15-year term life insurance policy in the amount of \$100,000.00. (Tr. 19-20; Ex. 16).

70. DeVries marked Mr. R.C. as a "non-tobacco" user on the application for the term life insurance policy. (Tr. 21-22; Ex. 16, page 8; Ex. 20, time 58:30-59:06). DeVries, as a long-time family friend of Mr. R.C., knew of Mr. R.C.'s long history as a tobacco or nicotine user. "R... 's a close friend and close to the family. I mean, I think he was—he's always, you know, chewing or vaping or doing something on and off again. He's been doing that for a while." (Ex. 20, time 1:01:14-1:01:24; Ex. 21, page 65).

71. An amendment disclosing Mr. R.C. as a tobacco user was later signed by both Mr. R.C. and DeVries and the policy was issued with tobacco rates. (Tr. 22; Ex. 16, page 24).

72. The premiums for this Farm Bureau term life policy were to be paid monthly by electronic funds transfer ("EFT") on the 1<sup>st</sup> of each month in the amount of \$21.49. (Tr. 24; Ex. 16, pages 20 and 27).

73. The application for the term life policy contains Mr. R.C.'s correct email address. (Tr. 23; Ex. 2, page 4; Ex. 16, page 12; Ex. 32, time 7:37-7:55; Ex. 41, time 1:57-2:10).

74. It is uncontroverted that Mr. R.C. either applied himself or authorized his electronic signature on the application for the term life policy. The application was also electronically signed by DeVries. (Tr. 23; Ex. 2, page 5; Ex. 16, pages 11-12, 14-17).

75. Mr. R.C. and DeVries both personally signed the term life policy delivery receipt dated March 17, 2015. (Tr. 24; Ex 16, page 25).

76. On or about April 26, 2018, DeVries submitted an application to convert Mr. R.C.'s existing term life policy to an IUL policy (Tr. 25; Ex 17). The IUL policy application was submitted with an electronic signature, dated April 26, 2018, purporting to be Mr. R.C.'s signature. (Tr. 28).

77. The application for conversion to an IUL policy bears electronic signatures purporting to be Mr. R.C.'s, dated April 26, 2018, and purporting to be genuine, that Mr. R.C. subsequently reported he did not authorize. (Tr. 159-160; Ex. 2, page 4). The EFT Authorization Form, the Replacement Notice, and the Policy Illustration, also dated April 26, 2018, purport to bear Mr. R.C.'s electronic signatures. (Tr. 19, 27-29, 164-65, 241; Ex. 17, pages 10-11, 13, 36, 50; Ex. 41, time 1:19-1:35).

78. DeVries affixed Mr. R.C.'s electronic signature on the IUL application at DeVries' computer and Mr. R.C. was not physically present at this time. (Ex. 20, time 1:13:27-1:15:24; Ex. 21, pages 75-76; Ex. 23, page 62; Ex. 41, time 1:14-1:36). Analysts Sullivan and Gibson questioned DeVries about his handling of Mr. R.C.'s IUL application during an investigative interview on September 26, 2019. (Ex. 21, pages 75-77). DeVries gave conflicting statements on the circumstances during this interview. DeVries initially replied that Mr. R.C. was present and reached across the desk to key in the electronic signature for the application on DeVries' computer. (Ex. 21, page 75). DeVries changed his story, admitting that Mr. R.C.'s consent was

by telephone – after multiple conversations – and DeVries had verbal authorization to “push the button ... to do his [Mr. R.C.’s] E signature via phone.” (Ex. 21, pages 76-77). At the hearing, DeVries’ counsel sought to elicit testimony to once again reverse his client’s recollection of this important event with leading questions:

Counsel: You did not sign his conversion application.

DeVries: No.

Counsel: Mr. [R.C.], he signed and you went over the conversion application with him. Correct?

DeVries: Yes.

Counsel: I think in your questions to – with Ms. Nagel you got a little confused between application and policy receipt. Those are two separate things. Correct?

DeVries: Yes.

Counsel: And then let’s be very clear. [R.C.]’s conversion application was a document you went through with him and he signed – he signed?

DeVries: Yes.

(Tr. 363-364). This version of DeVries’ recollection is inconsistent with DeVries’ earlier statements to the Farm Bureau investigator and to the Division analysts. It is also inconsistent with Mr. R.C.’s statements on several occasions. We do not find DeVries’ testimony at the hearing to be credible in this exchange as DeVries’ counsel’s leading questions allowed little probative value in the four words uttered by his client on this central issue. Mr. R.C. corroborated DeVries’ prior inconsistent statements to the Division analysts when Mr. R.C. previously stated to Farm Bureau’s investigator during an interview that he was not aware of the conversion to the IUL policy and did not authorize an electronic signature on the IUL application. (Tr. 159-163). This evidence is also corroborated by Mr. R.C.’s statements made to



one of the Division analysts in a telephone interview on October 10, 2019. (Tr. 240-241; Ex. 41, time 1:14-1:36). The fact that Mr. R.C. did not consent to a signing of the IUL application is also consistent with his earlier telephone call to Farm Bureau during the month of June 2019 to report the problem (Ex. 32), and the follow-up telephone call from Farm Bureau to Mr. R.C. (Ex.33).

79. We find – from all the evidence – that DeVries affixed Mr. R.C.’s electronic signature on the IUL application at DeVries’ computer on or about April 26, 2018, while Mr. R.C. was not physically present and without Mr. R.C.’s prior consent. DeVries completed and submitted the IUL policy application and conversion without Mr. R.C.’s review and certification. We find DeVries knew Mr. R.C. had not fully reviewed the relevant IUL policy application, the EFT Authorization Form, or the Illustration, and thereby had not consented to his electronic signatures with an intent to certify the truth, accuracy, completeness and understanding of all information contained in the documents.

80. Although DeVries had lodged standing hearsay objections (Tr. 6-10), we over-rule these objections and find DeVries’ out-of-court admissions and Mr. R.C.’s out-of-court statements to be significantly more credible than DeVries’s in-court testimony on this point.

81. In finding for the Division on its allegation that DeVries knowingly applied Mr. R.C.’s electronic signatures on the IUL policy application and related documents on April 27, 2018, without his knowing consent, we also consider the prior similar conduct of DeVries on April 27, 2017, and again on January 5, 2018, when he applied Mr. J.BL.’s electronic signatures without Mr. J.BL.’s consent to certify the truth, accuracy, completeness and understanding of all information in the documents.

82. Around this same time in April 2018, DeVries sent Mr. R.C. a text message to explain that a credit was going to be applied to Mr. R.C.’s life insurance policy and that Mr. R.C. did not

need to do anything. (Ex. 21, page 53). The text message also indicated that DeVries would try to obtain the lower non-tobacco rate despite DeVries' knowledge of Mr. R.C.'s tobacco usage and that DeVries would be willing to submit an oral kit on Mr. R.C.'s behalf to secure the lower premium rate. (Ex. 30; Ex. 41, time 0:32-0:59; Ex. 20, time 46:45-50:06; Ex. 21, pages 52-55; Ex. 22: time 36:00-37:00, 40:54-43:29; Ex.2, page 4; Tr. 166-167, 242-243). No oral kit was ever submitted. (Ex. 31, page 1; Ex. 41, time 1:02-1:10; Ex. 21, page 57).

83. The face value of the IUL policy was for \$100,000.00, but the monthly premiums increased to \$85.00 per month. (Tr. 26; Ex. 17, pages 2, 7, and 14).

84. Despite having access to a correct email address for Mr. R.C. from the term life policy file, DeVries listed a different and incorrect email address for Mr. R.C. on the IUL application. (Tr. 27, 164, 176, 187-89, 241, 349, 354; Ex. 2, page 4; Ex. 17, page 11; Ex. 23, page 87; Ex. 32, time 7:39-7:55; Ex 41, time 1:37-1:52). Although the Division offered limited circumstantial evidence that would be probative of fraudulent intent, we do find DeVries recklessly created an email address for Mr. R.C.'s IUL policy application with intentional disregard for the truthfulness or accuracy of the information. (Ex. 23, page 52-53).

85. The application for IUL conversion policy adds one beneficiary not previously named on the term life policy. (Ex. 17, page 6; Ex. 16, page 5).

86. On April 27, 2018, when DeVries submitted the IUL application and converted Mr. R.C.'s term policy, Mr. R.C. was credited \$610 towards the IUL policy in "conversion credits" and another \$236.50 was transferred in unused premium. Those credits were used to pay the initial monthly premiums, delaying any billing to Mr. R.C. for several months. (Ex. 17, page 2).

87. The monthly premium increased to \$85.00 per month, and with the conversion credits and unused premium, Mr. R.C. was not showing as owing premium until December 27, 2018.

When monthly electronic debits resumed, the increased monthly premium resulted in Mr. R.C. paying an additional \$444.57 in premiums over a period of 7 months. (Ex. 17, pages 2, 7, 13-20; Ex. 2, page 3).

88. Sometime around April or May 2019, after the credits had been expended, and as explained when he contacted Farm Bureau, Mr. R.C. noticed the higher premium amounts being withdrawn from his bank account. (Ex. 32, time 0:15-0:43). Mr. R.C. contacted DeVries to question the activity. DeVries told Mr. R.C. that a conversion of the term life insurance had occurred. DeVries represented to Mr. R.C. that he would try to have Farm Bureau change the policy back to its original form. (Ex. 32, time 0:15-0:43 and 8:09-8:23).

89. On May 29, 2019, more than a year after the IUL policy was issued, the policy delivery receipt and illustration were created and purportedly signed by handwriting. The handwritten signatures on the receipt and illustration, purporting to be Mr. R.C.'s signatures, were not affixed by Mr. R.C. (Tr. 29-30; Ex. 17, pages 50-51; Ex 32, time 5:55-7:10). The policy illustration used was generated on April 28, 2018. (Exhibit 17, pages 24-51). Mr. R.C. reviewed the signatures, stated that the signatures were not his own, and identified the following inaccuracies with the signatures: the letter 'R' in the signature does not match his signature because it does not start at the bottom and goes from left to right, the letters "a" and "y" do not comport with his handwriting, and the illustration appeared to have been altered by being previously erased or scanned in. (Tr. 159-161; Ex. 2, page 4). It is particularly noteworthy that in a recorded call with Farm Bureau, less than two weeks after Mr. R.C. purportedly signed the delivery receipt and illustration, Mr. R.C. stated that he never met with DeVries on May 29<sup>th</sup>, never signed the documents, and although he acknowledged that it may be more difficult to remember a year ago

(when they policy was converted without his consent), he could “certainly remember a month ago.” (Ex. 17, page 50-51; Ex. 32, time 4:24-7:10).

90. Under questioning by Farm Bureau Investigator Wehmeyer on July 17, 2019, DeVries initially denied signing Mr. R.C.’s handwritten signature on the delivery receipt. (Ex. 22, time 42:45-45:54, Ex. 23, pages 51-52). Under further questioning by the investigator, DeVries admitted the he did, in fact, sign Mr. R.C.’s handwritten signature on the delivery receipt. (Tr. 186-87; Tr. 344, 398; Ex. 20, time: 42:00-43:30, 46:07-46:24, 1:13:36-1:13:39; Ex. 21, pages 48-49, 52, 60-62, 132-33 and 245-46; Ex. 22, time 52:45-54:35, 1:22:55-1:23:10; Ex. 23, pages 60-62, 95-96). The signature does not indicate that DeVries was signing as agent on behalf of Mr. R.C. (Ex. 17, page 50-51). DeVries admitted to the Farm Bureau investigator, that he applied a handwritten signature purporting to be Mr. R.C.’s on the IUL policy receipt form without a prior discussion with Mr. R.C. (Ex. 23, page 62).

91. Mr. R.C.’s statements to “Mitch” by telephone with Farm Bureau during June 2019 and statements to the Division analyst in October 2019 corroborate Mr. R.C. was unaware his term life insurance had been converted by DeVries to an IUL insurance policy. (Ex. 32, time 0:15-8:46; Ex. 41, time 1:14-1:36).

92. Subsequently, Mr. R.C. filed a complaint with the National Association of Insurance Commissioners (“NAIC”) and a report with the Sioux City Police Department. (Tr. 243-244; Ex. 2, page 4; Ex. 41, time 2:16-2:35).

93. DeVries was paid \$1,084.34 in commissions for converting Mr. R.C.’s term life policy to the IUL policy. (Ex. 38, page 4).

7. Consumer Ms. J.B.

94. The seventh customer experience that the Division offered as grounds for discipline against DeVries was a conversion of a term life policy owned by Ms. J.B. to an IUL policy on October 30, 2018. (Ex. 3 and 4). DeVries was acquainted with Ms. J.B. as a client referred by a former Farm Bureau agent. (Ex. 22, 23, page 80). At all times pertinent hereto, Ms. J.B. was a resident of the state of Iowa. (Tr. 34; Ex. 3 and 4).

95. On or about June 18, 2014, Ms. J.B. applied for a Farm Bureau 30-year term life insurance policy in the amount of \$150,000.00. She purchased this policy through a previous agent. (Tr. 34; Ex. 3).

96. The premiums for this term life policy were to be paid monthly by EFT on the 15<sup>th</sup> of each month in the amount of \$32.49. (Tr. 35; Ex. 3, pages 2, 18 and 24).

97. The application for the term life policy contained Ms. J.B.'s correct email address. (Tr. 34; Ex. 3, page 10; Ex. 39, time 1:30-1:37; Ex. C, page 3; Ex. 2, page 6).

98. It is uncontroverted that Ms. J.B. either applied herself or authorized her electronic signature on the application for the term life policy. Her former agent also applied his electronic signature. (Tr. 35; Ex. 3).

99. Ms. J.B.'s former agent resigned from Farm Bureau insurance sales and as a result, DeVries accepted the former agent's book of business, including Ms. J.B.'s account. (Tr. 283).

100. On or about October 30, 2018, DeVries submitted an application to convert Ms. J.B.'s term life insurance policy to an IUL policy with \$100,000 in coverage. (Tr. 36-39; Ex. 4). The result was \$50,000 less in death benefit than under the term policy. (Tr. 37). The IUL policy application was submitted with an electronic signature, dated October 30, 2018, purporting to be Ms. J.B.'s signature. (Tr. 39).

101. When interviewed by the Farm Bureau investigator on or about July 10, 2019, Ms. J.B. did recall discussing the conversion of her term life policy to an IUL policy, but stated she did not authorize the IUL policy and told DeVries she did not want to convert to the IUL policy because she “could not afford it.” (Tr. 244-245; Ex. 2, page 7). When interviewed by a Division analyst on October 10, 2019, Ms. J.B. stated again that she told DeVries that she did not want the IUL policy. (Tr. 283, 325; Ex. 39, time 1:01-1:21; Ex. C, page 3).

102. The application for conversion to an IUL policy bears electronic signatures purporting to be Ms. J.B.’s, dated October 30, 2018, and purporting to be genuine, that Ms. J.B. has subsequently reported she did not authorize. (Tr. 178-79; Ex. 4, pages 4-43). The EFT Authorization, the Replacement Notice, and the Policy Illustration, also all dated October 30, 2018, purport to bear Ms. J.B.’s electronic signatures. (Ex. 4, pages 12-43). One record indicates the electronic signatures were applied at 8:47 a.m. on October 30, 2018. (Ex. 4, page 13).

103. At hearing DeVries testified that he met with Ms. J.B. once at his office seven to ten days prior to October 30, 2018, to explain the proposed conversion to the IUL policy. (Tr. 404-406). DeVries described it as “an offer to convert.” (Tr. 406).

104. One of the important consumer information disclosures to help consumers understand a conversion transaction is the replacement notice. (Ex. 4, page 14). Despite this replacement notice bearing what purports to be Ms. J.B.’s electronic signature, DeVries testified under oath at the hearing that he did not discuss the replacement document with the consumer. (Tr. 407-410; Ex. 4, page 14). DeVries admitted that he did not know where the replacement notice came from, opined that it may have been generated after the policy was issued, and explained that he never reviewed or explained the replacement notice to **any** client during the application process.

(Tr. 418). During this explanation, DeVries appeared visibly confused about the significance of the replacement notice. (Tr. 418).

105. During questioning by his own counsel, DeVries testified about the purported electronic signature of Ms. J.B. on the IUL policy application:

Counsel: [J.B.], Did you meet face-to-face with Ms. [J.B.]?

DeVries: Yes.

Counsel: Did you go over the policy application with her?

DeVries: Yes.

Counsel: Did she either do the e-signature or authorize the e-signature?

DeVries: Yes.

Counsel: Is there any question in your mind she understood and wanted the conversion policy in 2018 when she did convert her term policy?

DeVries: Yes.

(Tr. 383-384).

106. DeVries' one-word answers in response to the leading questions of his own attorney lack credibility, except possibly for DeVries' seemingly accidental admission in this exchange where he also questioned whether Ms. J.B. actually "wanted the conversion." (Tr. 383-384).

107. DeVries testified under questioning by the Commissioner that Ms. J.B. was in his office twice. Although his testimony was uncertain, we find DeVries did provide an explanation to Ms. J.B. concerning the IUL policy during the first meeting. (Tr. 413-415). However, DeVries in his testimony appeared uninformed about the IUL policy risks and benefits and did not appear to comprehend the risks due to uncertain future performance of the indexed crediting provisions in the policy. (Tr. 415-416; Ex. 4, page 35). Yet, DeVries also testified that the "first visit" was to "get a full understanding of it." (Tr. 417). The evidence shows that DeVries did not provide an

understanding of the documents to Ms. J.B. and she did not authorize the application of her electronic signatures.

108. The uncertainty in DeVries' testimony concerning his explanation of the illustration to Ms. J.B. only seven to ten days before October 30, 2018, is also troubling and undermines his credibility. The illustration, which bears a disputed electronic signature purporting to be that of Ms. J.B., is dated as prepared on October 30, 2018. That October 30 is the same date on which the electronic signature was applied and is seven to ten days after the date DeVries claims he explained the illustration with Ms. J.B. casts a long shadow of doubt on his testimony. (Tr. 418-422).

109. DeVries testified that he was not familiar with free look periods and appeared to not know if Farm Bureau life policies contained a free look period. (Tr. 342, 409). Each Farm Bureau life application relevant to this matter must contain a notice giving the applicant a 30-day right to examine. Each policy delivery receipt for every Farm Bureau life policy relevant to this matter, to be acknowledged by signature of the policyholder and DeVries as agent, contains the following language:

I understand that I have 30 days in which to review the policy and decide to accept or deny it. If I do not accept the policy, I understand that I can return it at any time within the 30 day period with a written notice of cancellation and receive a full refund of all the premiums paid.

(Ex. 4, page 54).

110. When asked about his suitability obligations (under Iowa Administrative Code 191—15.87(4)), Respondent admitted that he did not talk to Ms. J.B. about the numerous suitability considerations listed on the notice, but that he probably just told her the difference between term and permanent life insurance. (Tr. 410; Ex. 4, page 15). DeVries also testified that he did explain to Ms. J.B. some of the disadvantages of the IUL product, namely that it is more



expensive and would not grow if the index lost money, but acknowledged that he did not explain associated fees that impact a no-lapse guarantee because DeVries was not familiar with this concept. (Tr. 410-11).

111. DeVries' testimony that Ms. J.B. came in on October 30, 2018, and "that's when we went ahead and did the application" is not credible. (Tr. 416-419). The IUL policy application, the EFT authorization, the replacement notice and the policy illustration require signatures by the consumer certifying the truthfulness, accuracy, completeness and understanding of the content of the documents. (Ex. 4).

112. Since DeVries could not testify that he placed the documents in question before Ms. J.B., that he observed her reviewing the documents, or that he assisted her in understanding the contents of each document that now purport to bear the signatures of Ms. J.B., we have no credible basis to conclude that Ms. J.B. electronically signed with the intent to certify the truthfulness, accuracy, completeness or understanding of these four documents, either herself or by consent to have DeVries apply her electronic signatures. DeVries in his own words testified that he was not familiar with the replacement notice and was not sure he had ever seen it. (Tr. 418). Although we believe the disputed factual issue is close, we find that Ms. J.B.'s statement on July 10, 2019, to the Farm Bureau investigator and her statement on October 10, 2019, to the Division analyst that she had told DeVries she did not want to convert to the IUL policy because she "could not afford it" to be more credible. (Tr. 178-79; Ex. 4, pages 4-43). Ms. J.B. also made a statement to the Farm Bureau investigator that she did not authorize DeVries to sign the documents (Tr. 178-79; Ex. 4, pages 4-43), and we find that the preponderance of the evidence favors the Division's claim that Ms. J.B. did not give consent to DeVries – by applying electronic signatures on Ms. J.B.'s behalf – for her certification of the truthfulness, accuracy,

completeness and understanding of the content of the IUL policy application and other related documents that she did not review.

113. DeVries suggests that Ms. J.B.'s statements are not true due to some short-term memory loss due to an automobile accident on June 12, 2019. While we have given weight to Ms. J.B.'s statements that she had told DeVries she did not want to convert to the IUL policy because she "could not afford it," we conclude that her memory was sufficiently adequate that she would have remembered an event as important as changing her life insurance policy. Moreover, we have found that DeVries' own testimony has proven that Ms. J.B. did not give consent to DeVries – by applying electronic signatures on Ms. J.B.'s behalf – for her certification of the content of the IUL policy application and other very important related documents because DeVries was unable to establish that she reviewed the documents or that he understood them well enough to assist her review. DeVries assertions would have been more compelling had he understood the documents himself and had he devoted an appropriate level of time to assist Ms. J.B. to review and understand the documents before her.

114. Although DeVries lodged standing hearsay objections (Tr. 6-10), we over-rule these objections and find Ms. J.B.'s out-of-court statements that she had told DeVries she did not want to convert to the IUL policy because she "could not afford it," to be credible.

115. DeVries indicated on the IUL policy application's signature page that the electronic signatures were obtained "Face to Face." (Ex. 4, page 11). While Ms. J.B.'s presence in DeVries' office on October 30, 2018, may not be known with certainty, based on all of the evidence adduced, we find that Ms. J.B. did not knowingly and in person consent to DeVries certifying by electronic signatures on Ms. J.B.'s behalf, the content of IUL policy application or the other related documents, and we do find that she told DeVries she could not afford it.

116. We find DeVries knew Ms. J.B. had not fully reviewed the relevant IUL policy application, the EFT Authorization Form, the Replacement Notice, or the Illustration, and thereby had not consented to her electronic signatures with an intent to certify the truth, accuracy, completeness and understanding of all information contained in the documents.

117. In finding for the Division on its allegation that DeVries knowingly applied Ms. J.B.'s electronic signatures on the IUL policy application and related documents on October 30, 2018, without her knowing consent, we also consider the prior similar conduct of DeVries on April 27, 2017, and again on January 5, 2018, when he applied Mr. J.B.L.'s electronic signatures without Mr. J.B.L.'s consent, and on April 27, 2018, when he applied Mr. R.C.'s electronic signatures without Mr. R.C.'s consent.

118. At the conversion to the IUL policy, Ms. J.B. received \$260 in conversion credit and \$32.49 in unused premium toward the IUL premium, delaying the need for additional premium due until December 18, 2018. ((Tr. 41-42; Ex. 4, page 2). This also delayed the likelihood Ms. J.B. would detect DeVries' wrongful conduct. The monthly premiums for Ms. J.B. increased to \$99.87 per month following the conversion to the IUL policy, resulting in the payment of an additional \$806.16 in premiums over the period of 11 months. (Tr. 37, 41; Ex. 4, page 2).

119. The IUL policy application for Ms. J.B. listed an email address of [First Name].[Last Name]2014@gmail.com. (Tr. 38; Ex. 4, page 11; Ex. 21, pages 98-103; Ex. 23, page 87). This email is not, and has never been, Ms. J.B.'s actual email address. (Tr. 38, 178-179, 245, 283; Ex. 39, time 1:40-2:19; Ex. C, pages 3-4; Ex. 2, pages 6-7). Although we only have circumstantial evidence of fraudulent intent, we do find DeVries recklessly created email addresses for Ms. J.B.'s IUL policy application with intentional disregard for the truthfulness or accuracy of the information. (Ex. 23, page 87).

120. DeVries also completed and submitted a low mileage verification form on October 30, 2018, containing a handwritten signature purporting to be Ms. J.B.'s. Ms. J.B. reviewed the signature and stated the handwritten signature was not, in fact, her own and that she had not signed the low mileage form. (Tr. 178-179; Ex. 2, page 7; Ex. C, pages 7-10; Ex. 37).

121. On January 23, 2019, nearly 3 months after the IUL policy was issued, the policy delivery receipt was signed. The delivery receipt for the IUL policy contains a handwritten signature purporting to be the signature of Ms. J.B. (Ex. 4, page 54). Ms. J.B. reviewed the signature and made the statement that the signature contained abnormalities, was not, in fact, her signature, and that she never authorized anyone at Farm Bureau to sign on her behalf. (Tr. 178-179, 284-285; Ex. 2, page 7; Ex. 37).

122. DeVries was paid \$910.82 in commissions for converting Ms. J.B.'s term policy to an IUL policy. (Ex. 38, page 2).

#### 8. Consumer Mr. C.P.

123. The eighth customer experience that the Division offered as grounds for discipline against DeVries was a conversion of a term life policy owned by Mr. C.P. to an IUL policy on April 26, 2019. (Ex. 14 and 15). DeVries was acquainted with Mr. C.P. as a friend who was in the automobile body repair work. (Ex. 22, 23, page 65). At all times pertinent hereto, Mr. C.P. was a resident of the state of Iowa. (Tr. 76-77; Ex. 14 and 15).

124. On or about June 12, 2017, Mr. C.P. purchased a Farm Bureau 20-year term life insurance policy in the amount of \$250,000.00. (Tr. 77-78; Ex. 14).

125. The premiums for this Farm Bureau term life policy were to be paid monthly by EFT in the amount of \$25.36. (Tr. 78; Ex. 14, pages 2 and 30).

126. The application for the term life policy application contained Mr. C.P.'s correct email address. (Tr. 77, 280; Ex. 14, page 13).

127. It is uncontroverted that Mr. C.P. either applied or authorized the application of his electronic signature to the application documents for the term life policy. The application was also electronically signed by DeVries. (Tr. 81; Ex. 14).

128. The term life policy was issued on June 20, 2017. (Ex. 14, page 30). The delivery receipt, dated January 15, 2019—a year and a half after policy issuance, bears handwritten signatures for Mr. C.P. and DeVries. (Ex. 14, page 33).

129. On or about April 26, 2019, DeVries completed and submitted an application to partially convert the existing term life policy into an IUL policy. (Tr. 79; Ex. 15). The value of the IUL policy was for \$50,000.00 with an additional, increased monthly premium of \$50.11. (Tr. 80). The remaining \$200,000.00 continued as term coverage. (Ex. 15, pages 2, 7, and 16). The IUL policy was submitted with an electronic signature, dated April 26, 2019, purporting to be Mr. C.P.'s signature. (Tr. 81).

130. On behalf of the Division, Investigator Wehmeyer testified that Mr. C.P. was interviewed, but did not offer any foundation on when or where the interview occurred, nor do we have any information concerning who was present for the interview. (Tr. 176-177.) Investigator Wehmeyer testified that Mr. C.P. "did not authorize" DeVries to sign the IUL policy application on Mr. C.P.'s behalf. This testimony is unmistakably based upon hearsay. Just prior to this testimony, the Division's counsel referred Investigator Wehmeyer to a report that references an interview conducted by another investigator apparently on July 9, 2019, but it is not known whether Investigator Wehmeyer was present at the actual interview of Mr. C.P., heard the description from the other investigator, or read the report of another investigator, or whether

the report refreshed Investigator Wehmeyer's memory of what he may have heard from Mr. C.P. or from the other investigator. (Tr. 176-177).

131. Although DeVries lodged standing hearsay objections (Tr. 6-10), we over-rule these general objections for admissibility. DeVries did not specify any objections when the content of the interview was presented. (Tr. 176-177). But as to probative value – suffice it to say – we find we may be considering double, if not triple hearsay, without any recording, documentation or contemporaneous notes of the other investigator's interview with Mr. C.P. While we find Investigator Wehmeyer to be a trustworthy and credible individual, we have no impartial means to assess the veracity of either the other interviewing investigator or Mr. C.P. We did not find DeVries' admissions either in investigative interviews or in his hearing testimony to be illuminating, but the Division's thin evidence on the circumstances surrounding the conversion of Mr. C.P.'s term policy to an IUL policy is not sufficient to conclude the Division's allegations are known.

132. We note the Division did not offer any evidence from Farm Bureau that would establish the genuineness of the electronic signatures, which in turn would be presumed to be Mr. C.P.'s certification to the truth, accuracy, completeness and understanding of all of the information in the documents.

133. We find the evidence to be inconclusive on the issue of whether Mr. C.P. fully reviewed the relevant IUL policy application, the EFT Authorization Form, and the Illustration, and thereby consented to his electronic signatures with the intent to certify the truth, accuracy and understanding of all information contained in the documents.

134. The Division failed to carry its burden of proof concerning its allegations that DeVries committed any violation of law or engaged in any other disqualifying conduct in connection with a conversion of Mr. C.P.'s term life insurance policy to an IUL life insurance policy.

### III. CONCLUSIONS OF LAW

135. 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." *In the matter of Diamond*, No. 96975, 2019 WL 5677529, (Iowa Ins. Div., Oct. 23, 2019), at 35; *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. *Diamond, Id.* at 35; *In the matter of Michael Nulph*, Division Case No. 94689, November 7, 2017, 2017 WL 6504599 (Iowa Ins. Div.) at 5.

136. 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:

\* \* \*

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

\* \* \*

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.

\* \* \*

j. Forging another's name to an application for insurance or to any document related to an insurance transaction.

137. In Counts 1 and 2 the Division has charged DeVries with unfair and deceptive acts and practices in violation of Iowa Code, chapter 507B. 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. *Diamond, Id.* at 36.

138. 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.) *Diamond, Id.* at 36; *In the matter of Newman*, No. 91936, 2017 WL 6504574

(Iowa Ins. Div., Jan. 24, 2017) at 8.

139. 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.

140. 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; *Diamond, Id.* at 37; *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; *Diamond, Id.* at 37; *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).

141. 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).

142. 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, and the declaration of purpose found in Iowa Code §507B.1 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. *Diamond, Id.* at 37; *Newman, Id.* at 9.

143. 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 deception and 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. *Diamond, Id.* at 38. To the contrary, we conclude judicial and administrative decisions interpreting these laws may provide persuasive precedent.

144. 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. *Diamond, Id.* at 38; *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. *Diamond, Id.* at 38; *Newman, Id.* at 9-10; *Vertrue, Id.* at 33-34.

145. We have also consistently 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, unavoidable injury to insurance purchasers. *Diamond, Id.* at 38; *Newman, Id.* at 10. Unfair practices may also be described as an act or practice that causes substantial, unavoidable injury to consumers that is not outweighed by consumer or competitive benefits produced by the act or practice. Iowa Code §714.16(1)(n); *Vertrue, Id.* at 33-34.

146. In Count 3 the Division has charged DeVries with forgery.

147. In Count 4 the Division has charged DeVries with dishonest practices and demonstrating incompetence or untrustworthiness.

148. All four counts generally address the same conduct of DeVries, but we consider them separately.

**COUNT 1**  
**Misrepresentation on Insurance Application**

149. The broad regulatory authority in Iowa Code § 507B.3 is aided by enumerated *per se* violations, including, but not limited to those enumerated in Iowa Code §§ 507B.4 and chapter 522B. *Diamond, Id.* at 38; *Newman, Id.* at 10.

150. 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.

151. We apply to the Division's allegation under Count 1 our findings concerning DeVries' actions related to his completing and signing IUL applications for:

Mr. J.B.L. on April 22, 2017 and January 5, 2018;

Mr. R.C. on April 26, 2018; and

Ms. J.B. on October 30, 2018.

152. Based on our findings, DeVries's actions in these transactions events appear to be relatively isolated events of moving forward conversions to IUL policies that were not authorized by the customers. We note that the Division offered five other "similar" circumstances, which we found the Division failed to prove. While similar conduct may be relevant on issues of intent, we are disinclined to consider similar prior acts to show a propensity to commit the alleged action. Iowa R. Evid. 5.404(b); *State v. Delong*, 782 N.W.2d 170, 2010 WL 1050250, (Iowa Ct. App. 2010).

153. A false statement or representation under Iowa Code § 507B.4(3)(n) does not require a finding of intent to defraud. We do conclude it requires knowledge that the statement or representation is false, or at least a reckless disregard for the truth or falsity of the representation or statement.

154. We conclude that DeVries' actions in completing and signing the four applications and their related documents involved inaccurate and false representations that he knew were false, or that he made in reckless disregard for the truth or falsity of the representation, including (1) on at least four occasions electronic signatures that misrepresented the consumers' intent to certify the truth, accuracy, completeness and understanding of all information contained in the documents; (2) on at least one occasion inaccurate medical information; (3) on at least three occasions inaccurate email addresses; and (4) on at least one occasion inaccurate information concerning the presence of the applicant.

155. DeVries received commissions for these transactions. Further, we conclude DeVries made the false representations for the purpose of receiving the commissions.

156. DeVries' acts and practices have been in violation of Iowa Code § 507B.4(3)(n) subjecting him to suspension or revocation of his insurance producer license, to the imposition of a civil penalty, an order requiring DeVries to cease and desist from engaging in such acts or practices, restitution, the imposition of costs of the investigation and prosecution of the matter, and any other corrective action the Commissioner deems necessary and appropriate pursuant to Iowa Code §§ 507B.7 and 505.8.

**COUNT 2**  
**Deceptive Sales Tactics**

157. The broad regulatory authority in Iowa Code § 507B.3 is also aided by the *per se* violations enumerated by regulation. Iowa Administrative Code chapter 191 – 15 establishes certain

minimum standards and guidelines of conduct by identifying unfair methods of competition and unfair or deceptive acts or practices in the business of insurance, as prohibited by Iowa Code chapter 507B.

158. Under Iowa Administrative Code rule 191 – 15.8(2)(b)(1), a producer shall not “execute a transaction for an insurance customer without authorization by the customer to do so.” This practice is unfair, irrespective of whether it is deceptive. Nevertheless, we find DeVries’ actions to be both unfair and deceptive.

159. We apply to the Division’s allegation under Count 2 our findings concerning DeVries’ actions related to his completing and signing IUL applications for:

Mr. J.BL. on April 22, 2017 and January 5, 2018;

Mr. R.C. on April 26, 2018; and

Ms. J.B. on October 30, 2018.

160. DeVries submitted applications for the conversion of term life insurance policies to IUL insurance policies for Mr. J.BL., Mr. R.C., and J.B. – applying electronic signatures purporting to be genuine – while knowing these consumers had not fully reviewed the IUL policy application, nor the other related documents, and had not consented to the electronic signatures with the intent to certify the truth, accuracy and understanding of all information contained in the documents. This conduct was both unfair and misleading as Farm Bureau relied on the representation of consumer certification.

161. DeVries’ acts and practices have been in violation of Iowa Code § 507B.3 subjecting DeVries to suspension or revocation of his insurance producer license, to the imposition of a civil penalty, an order requiring DeVries to cease and desist from engaging in such acts or practices, restitution, the imposition of costs of the investigation and prosecution of the matter,

and any other corrective action the Commissioner deems necessary and appropriate pursuant to Iowa Code §§ 507B.7 and 505.8.

**COUNT 3**  
**Forgery**

162. Under Iowa Code § 522B.11(1)(j), a license may be subject to probation, suspension, or revocation and civil penalties may be levied, as provided in Iowa Code § 522B.17, for forging another's name to an application for insurance or to any document related to an insurance transaction.

163. "Forgery" is not defined in Iowa Code § 522B.1. However, Iowa Code § 715A.2 does describe the crime of forgery:

A person is guilty of forgery if, with intent to defraud or injure anyone, or with knowledge that the person is facilitating a fraud or injury to be perpetrated by anyone, the person does any of the following:

- a. Alters a writing of another without the other's permission.
- b. Makes, completes, executes, authenticates, issues, or transfers a writing so that it purports to be the act of another who did not authorize that act, or so that it purports to have been executed at a time or place or in a numbered sequence other than was in fact the case, or so that it purports to be a copy of an original when no such original existed.

164. Unlike Counts 1 and 2, the count of forgery does require a finding of intent to defraud or injure another person. We apply to the Division's allegation under Count 3 our findings concerning DeVries' actions related to his completing and signing IUL applications for:

Mr. J.BL. on April 22, 2017 and January 5, 2018;

Mr. R.C. on April 26, 2018; and

Ms. J.B. on October 30, 2018.

165. DeVries submitted applications for the conversion of term life insurance policies to IUL insurance policies for Mr. J.BL., Mr. R.C., and J.B. – applying electronic signatures purporting

to be genuine – while knowing these consumers had not fully reviewed the IUL policy application, nor the other related documents, and had not consented to the electronic signatures with the intent to certify the truth, accuracy and understanding of all information contained in the documents. However, while the Division may have established DeVries either knew or recklessly disregarded his obligations for assisting customers prepare, understand and sign truthful, accurate and complete documents, without sworn testimony of the consumers or admission by DeVries, the Division’s evidence failed to prove that DeVries acted with the intent to defraud or injure the consumers.

166. DeVries wrongfully applied a handwritten signature for Ms. J.B. on the delivery receipt associated with the IUL policy. The Division failed to prove that act was done to fraudulently conceal an unauthorized transaction. DeVries wrongfully applied a handwritten signature for Ms. J.B. on a low mileage authorization form. The Division failed to prove that act was done to defraud Farm Bureau.

167. The Division failed to prove DeVries committed forgery.

#### **COUNT 4**

#### **Dishonest Practices and Demonstrating Incompetence or Untrustworthiness**

168. We now take up the charges in Count 4 in the 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.”



169. 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, Id.* at 4.

170. 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. *Diamond, Id.* at 55. *In the matter of Tommy McCellan-Bey*, No. 956516, 2018 WL 8220766, at 5 (Iowa Ins. Div., Oct. 12, 2018).

171. The text of Iowa Code § 522B.11(1)(h) makes clear that lack of competence in itself, authorizes revocation, suspension, or refusal of an insurance producer's license. The term “incompetence” as used in applicable professional licensing statutes is not defined. Therefore, in interpreting the meaning of “incompetence” we must employ the plain and ordinary meaning of the words as used in the statute. “Competent,” as an adjective, is defined as “having requisite or adequate ability or quality.” *In the matter of Charlene Schuman Deegan*, No. 98419, 2018 WL 8220811, at 6. (Iowa Ins. Div., Nov. 30, 2018). Dictionary by Merriam-Webster, <https://www.merriam-webster.com/>. Therefore, competence in the context of an insurance producer license is demonstrating the reasonable skill, care and diligence necessary to perform the duties and responsibilities of an insurance producer, which are relied upon by the public when dealing with a licensed individual acting under the imprimatur of a state of Iowa insurance professional license. *See Sandbulte v. Farm Bureau Mutual Insurance Co.*, 343 N.W.2d 457

(Iowa 1984). In the case of an insurance professional obtaining the consent of an individual to apply for a life insurance policy and authorizing medical underwriting, it is a level of competence owed by the licensed individual to the applicant, to insurance carriers, to prospective beneficiaries, to our laws and regulations, and to the regulatory authorities given charge over insurance producer conduct. Falling below this professional standard of conduct would therefore constitute “incompetence.” *Deegan, Id.* at 6.

172. “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)).

173. The word “dishonest” has plain and ordinary meaning. Yet, it can be defined as “characterized by lack of truth, honesty, or trustworthiness.” *Diamond, Id.* at 56 (Citing Dictionary by Merriam-Webster, <https://www.merriam-webster.com/>).

174. From all of the evidence and findings, and without repeating the factual details here, we conclude that DeVries’ unfair and deceptive practices detailed in Count 1 and 2 also constitute dishonest practices and demonstrate DeVries’ incompetence multiple times in connection with four IUL transactions, subjecting his producer license to suspension or revocation under Iowa Code § 522B.11(*h*).

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

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

176. DeVries' acts and practices have been in violation of Iowa Code § 522B.11(1)(h) subjecting DeVries to probation, suspension, or revocation of his insurance producer license, the imposition of a civil penalty, an order requiring DeVries to cease and desist from engaging in such acts or practices, the imposition of costs of the investigation and prosecution of the matter, and any other corrective action the Commissioner deems necessary and appropriate pursuant to Iowa Code §§ 522B.11, 522B.17, and 505.8.

### **FINAL ORDERS**

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

- A. DeVries' nonresident insurance producer license is immediately suspended for a period of one year from the date of this order pursuant to Iowa Code §§ 507B.7 and 522B.11;
- B. DeVries is prohibited from selling, soliciting, or negotiating insurance and transacting any insurance business in this state pursuant to Iowa Code § 505.8(10) during his license suspension;
- C. DeVries, pursuant to Iowa Code §§ 507B.7 and 522B.17, is permanently prohibited from applying an electronic signature to any document on behalf of any consumer or policyholder, irrespective of consent;
- D. DeVries, pursuant to Iowa Code §§ 507B.7 and 522B.17, is permanently required – whenever witnessing any electronic signature in the business of insurance – to make

and maintain a journal to document all such electronic signatures, including the date, printed name of signer, a handwritten signature of signer, and signature of witness;

- E. DeVries shall, within 30 days of this Order, pay a civil penalty in the amount of \$5,000.00, made payable to the Iowa Insurance Division, to be credited to the Iowa Enforcement Fund, to provide funds for insurance enforcement and education pursuant to Iowa Code §§ 505.8, 507B.7, 522B.11, and 522B.17;
- F. The parties shall bear their own costs of investigation and prosecution; and
- G. These orders may be enforced under Iowa Code chapters 507B and 522B, including but not limited to Iowa Code § 507B.8 and 522B.17(3), and additionally, by any collection remedies available to the State of Iowa Department of Revenue for unpaid penalties and other ordered monetary amount.

SO ORDERED on the 26<sup>th</sup> day of March, 2021.



DOUGLAS M. OMMEN  
Iowa Insurance Commissioner

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**Attorney for Respondent**

**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause, or their attorney, at their respective addresses disclosed on the pleadings on March 26, 2021.

By:  First Class Mail *Respondent 3/29*  Personal Service  
 Restricted certified mail, return receipt  Email, by consent  
 Certified mail, return receipt  \_\_\_\_\_

Signature: /s/ Hilary Foster  
Hilary Foster

**NOTICE OF PENALTIES FOR WILLFUL VIOLATION OF THIS ORDER**

**YOU ARE NOTIFIED** that acting as an insurance producer, as defined in Iowa Code chapter 522B, in violation of this Order, is a felony under Iowa Code § 507A.10, subjecting you to punishment of imprisonment, jail, fines, or any combination of custody and fines.

**YOU ARE ALSO NOTIFIED** that if you violate this Order, you may be subject to administrative and civil penalties pursuant to Iowa Code § 522B.17(3). The Commissioner may petition the district court to hold a hearing to enforce the order as certified by the Commissioner. The district court may assess a civil penalty against you in an amount not less than three thousand dollars but not greater than ten thousand dollars for each violation, and may issue further orders as it deems appropriate.

**NOTICE REGARDING REISSUANCE**

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

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

### **NOTICE OF FINAL ORDER IMPACT**

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

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