



BEFORE THE IOWA INSURANCE COMMISSIONER

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IN THE MATTER OF	)	Division Case No. 109030
	)	
MICHAEL P. MULVEHILL,	)	<b>FINAL ORDER REFUSING</b>
Applicant	)	<b>TO ISSUE AN INSURANCE</b>
	)	<b>PRODUCER LICENSE</b>

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**DECISION**

Applicant Michael P. Mulvehill’s application for nonresident insurance producer license is refused due to his using fraudulent, coercive and dishonest practices and demonstrating untrustworthiness, incompetence and financial irresponsibility in the conduct of business.

A hearing was held in the above-captioned matter beginning on April 1, 2021, at 9:00 A.M. before Commissioner Douglas M. Ommen. The hearing was held at the offices of the Iowa Insurance Division, 1963 Bell Avenue, Suite 100, Des Moines, Iowa 50315. The purpose of the hearing was to hear testimony and receive evidence regarding the Iowa Insurance Division’s denial of Michael P. Mulvehill’s application for an individual insurance producer license. The hearing was conducted via Webex, a video conferencing platform, from the offices of the Iowa Insurance Division. Michael P. Mulvehill (“Mulvehill”) appeared *pro se* by videoconference. The Iowa Insurance Division (“the Division”) was represented by Compliance Attorney Lanny Zieman.

At the hearing, after Commissioner Ommen provided instruction to the parties on procedural matters, evidence was received. The Division called Compliance Officer Wayne Lacher and Mulvehill to testify. Mulvehill then offered testimony on his own behalf.

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:

**FINDINGS OF FACT**

1. Mulvehill was charged in Iowa District Court for Black Hawk County on May 14, 2020, with Theft in the 1<sup>st</sup> Degree, a felony.

2. The facts alleged in support of the felony charges were as follows:

On March 18<sup>th</sup>, 2019 the complainant [police officer] was assigned a theft case where the victim ██████████ Mulvehill's son, Michael was stealing money out of her bank account. The bank account was through Regions [Bank] and was identified as [redacted] by ██████████. At the time Michael was the power of attorney for ██████████'s finances, and medical decisions. The complainant completed a subpoena for ██████████'s bank account records which showed since January 2018, there had been 136 transactions in Montana with a large majority of them in Missoula Montana where Michael lives, and the total for these transactions came to \$10,296.98. In speaking with ██████████ she informed me she did not give loans out to anyone, and no one should be getting money out of her account. Due to [Michael Mulvehill] spending ██████████'s money she did not have enough to pay her rent and other bills. As of April 1<sup>st</sup>, 2019 ██████████ was past due on her rent at the Western Home to the amount of \$26,131.98, and she didn't know why. On May 13<sup>th</sup>, 2019 the complainant spoke with Michael on the phone. The complainant told Michael about the \$10,296.98 he had spent in Montana and the complainant said he would not dispute that. The complainant also said he used ██████████'s assets for his own personal use.

3. Mulvehill filed a uniform application for license as a nonresident insurance producer in the state of Iowa with the Division on February 23, 2021 ("Uniform Application").

4. Mulvehill is 65 years old.

5. In submitting the Uniform Application, Mulvehill designated the Commissioner as an agent for service of process.

6. Question 1A of the Uniform Application included the following question: “Have you ever been convicted of a misdemeanor, had a judgment withheld or deferred, or are you currently charged with committing a misdemeanor?”

7. Question 1B of the Uniform Application included the following question: “Have you ever been convicted of a felony, had a judgment withheld or deferred, or are you currently charged with committing a felony?”

8. Question 1 of the Uniform Application included the following instruction:

Note: For questions 1A, 1B and 1C, “Convicted” includes, but is not limited to, having been found guilty by verdict of a judge or jury, having entered a plea of guilty or nolo contendere or no contest, or having been given probation, a suspended sentence, or a fine. If you answer yes to any of these questions, you must attach to this application: (a) a written statement explaining the circumstances of each incident, (b) a copy of the charging document, and (c) a copy of the official document, which demonstrates the resolution of the charges or any final judgment.

9. Mulvehill answered “Yes” to Question 1A of the Uniform Application.

10. Mulvehill answered “No” to Question 1B of the Uniform Application.

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

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

12. As of February 23, 2021, Mulvehill had been charged with Theft in the 1<sup>st</sup> Degree, a felony, and on December 3, 2020, he entered a plea of guilty to the lesser included crime of Theft in the 3<sup>rd</sup> Degree.

13. In his plea of guilty, Mulvehill made the following admissions:

I admit that on or about Jan 20, 2018 to Feb 19, 2019, I did the following things that constitute the criminal offense: Misappropriation of property of another by disposing of it in a manner which was inconsistent with the owner's rights in such property and the value of such property is between \$750.00 and \$1,500.00.

14. In explaining his conviction as part of his Uniform Application, Mulvehill made the following statement:

On 12/03/2020 I plead guilty to a Theft 3<sup>rd</sup> Degree that I was not guilty of rather than wait for a trial that was scheduled for April of 2021. It was in Iowa District Court and the Order Judgement and Sentence is in the Attachment Warehouse NIPR Warehouse.

The parties were the State of Iowa VS Michael Mulvehill. The state believed that, while my mother was in an Assisted Living Center in Cedar Falls in 2018, I stole money from my mother, when in fact she lent it to me. She is still there, and has been since 2013. My mother did not press charges, in fact she was a witness for the defense. The State of Iowa was the Plaintiff. They decided to press charges at the request of the Western Home in Cedar Falls.

I am now paying restitution to my mother of \$50 per month, which I am already doing. Once my mother, who is 96, passes away, I will be paying restitution to her estate which will then be sent to me as I am the sole beneficiary. In addition to the restitution I received 2 years' probation which I am currently doing with no restrictions. I reported one time and now am unsupervised and am free to leave the state as well as move away from the state with notice.

Again the document is in the Attachment Warehouse.

15. Mulvehill also testified at the hearing in this matter that he was not guilty of a crime. He also testified that pursuant to his plea he was paying restitution back to his mother knowing that it would come back to him when she died. Pursuant to the probation ordered following his plea of guilty he was ordered to pay full restitution of \$10,296.98 by making monthly installments of \$50 per month. At that rate, full restitution would be paid without interest in 206 months or 17 years. Mulvehill's probation was ordered for a period of two years and will not be completed until December 3, 2022.

16. On March 2, 2021, the Division denied Respondent's February 23, 2021, nonresident insurance producer license application.

17. On March 2, 2021, Respondent was notified of the license denial based upon his prior guilty plea to Theft 3<sup>rd</sup> Degree, a Serious Misdemeanor in violation of Iowa Code § 714.2(3) and the fact that he was on probation for two years and had not completed paying restitution.

18. The Respondent requested a hearing and the matter was set by notice of hearing issued on March 9, 2021.

### **CONCLUSIONS OF LAW**

19. Applications for nonresident individual insurance producer licenses in Iowa must be made on the National Association of Insurance Commissioners' uniform application for insurance producer licensing. Iowa Code §§ 522B.1(18) and 522B.5(1).

20. The Division has been participating in the NAIC uniform insurance producer application processes for at least 15 years. 2001 Acts, ch 16, §19, 37 and Iowa Code § 522B.5. Iowa's Licensing of Insurance Producers Law is based upon the NAIC's Producer Licensing Model Act. 2000 Proceedings of the NAIC, 3<sup>rd</sup> Quarter 7, 11, 36-45, 386, 403. Iowa is a participating state in the National Insurance Producer Registry ("NIPR"). (See NIPR News Release, [http://www.nipr.com/news/10th\\_anniversary\\_marked.htm](http://www.nipr.com/news/10th_anniversary_marked.htm) September 9, 2006.)

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

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

- a. Providing incorrect, misleading, incomplete, or materially untrue information in the license application.
- b. Violating any insurance laws, or violating any regulation, subpoena, or order of the commissioner or of a commissioner of another state.
- c. Obtaining or attempting to obtain a license through misrepresentation or fraud.
- d. Improperly withholding, misappropriating, or converting any moneys or properties received in the course of doing insurance business.
- e. Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance.
- f. Having been convicted of a felony.
- g. Having admitted or been found to have committed any unfair insurance trade practice or fraud.
- h. Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere.
- i. Having an insurance producer license, or its equivalent, denied, suspended, or revoked in any other state, province, district, or territory.

\* \* \*

2. If the commissioner does not renew a license or denies an application for a license, the commissioner shall notify the applicant or licensee and advise, in writing, the licensee or applicant of the reason for the nonrenewal of the license or denial of the application for a license. The licensee or applicant may request a hearing on the nonrenewal or denial. A hearing shall be conducted according to section 507B.6.

22. 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.

23. Mulvehill may be disqualified from licensure by reason of his fraudulent, coercive, dishonest, untrustworthy, incompetent and financially irresponsible conduct as an agent with power of attorney for his mother that gave rise to the criminal charges.

24. Mulvehill testified that he was unaware of the criminal charge when he submitted his uniform application for a resident license in Arizona on September 16, 2020. We do not find it necessary to reach that particular factual issue to support refusal of his license.

25. The fiduciary duties of an agent who has been vested with power of attorney are prescribed by Iowa Code § 633B.114, in part:

1. Notwithstanding provisions in the power of attorney, an agent that has accepted appointment shall act in conformity with all of the following:
  - a. In accordance with the principal's reasonable expectations to the extent actually known by the agent and otherwise **in the principal's best interest**.
  - b. In good faith.
  - c. Only within the scope of authority granted in the power of attorney.
2. Except as otherwise provided in the power of attorney, an agent that has accepted appointment shall do all of the following:
  - a. **Act loyally for the principal's benefit.**
  - b. **Act so as not to create a conflict of interest that impairs the agent's ability to act impartially in the principal's best interest.**
  - c. Act with the care, competence, and diligence ordinarily exercised by agents in similar circumstances.
  - d. Keep a record of all receipts, disbursements, and transactions made on behalf of the principal.
  - e. Cooperate with a person that has authority to make health care decisions for the principal to carry out the principal's reasonable expectations to the extent actually known by the agent and, otherwise, act in the principal's best interest.
  - f. Attempt to preserve the principal's estate plan, to the extent actually known by the agent, if preserving the plan is consistent with the principal's best interest based upon all relevant factors, including all of the following:
    - (1) The value and nature of the principal's property.
    - (2) The principal's foreseeable obligations and need for maintenance.**
    - (3) Minimization of the principal's taxes, including income, estate, inheritance, generation-skipping transfer, and gift taxes.
    - (4) The principal's eligibility for a benefit, a program, or assistance under a statute or regulation or contract.

(Emphasis added.) Under his appointment as agent with power of attorney for his mother, Mulvehill had a duty to act solely in the best interest of his 96 year old mother, who is a resident of an assisted living facility. No exception to this obligation exists simply because Mulvehill is also the principal's son. The mother's best interest includes keeping her financial affairs in order and keeping her current on her rent obligations. Mulvehill breached those duties, whether or not he rationalized that he could give himself loans from his mother's assets. It was clear from his testimony that Mulvehill intentionally disregarded this conflict of interest and placed his interest above his mother's best interest. Further, while the individual amounts are not known, the police officer's affidavit indicates money was transferred on 136 transactions. This high number of transfers is inconsistent with Mulvehill's defense that the transfers were merely a loan from his mother. This fact – along with his inconsistent admissions in the plea of guilty – render Mulvehill's claim of loan as lacking all credibility. Regardless, his explanation that he will get it all back as “sole beneficiary” demonstrates his unlawful self-interest and fails to recognize that creditors will have priority in probate.

26. We do understand a defendant may have other considerations when deciding whether to enter a plea of guilty, but a willingness to admit to criminal conduct of stealing in court for advantage, only to later deny the crime of dishonesty for advantage, also casts serious doubt on Mulvehill's character for honesty, candor and trustworthiness.

27. We may refuse a license under Iowa Code § 522B.11(h) 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.” Mulvehill's appointment as an agent with power of attorney is “in the conduct of business.”



28. 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.

29. 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).

30. The text of Iowa Code § 522B.1 l(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 agent with power of attorney, it is a level of competence set out by Iowa Code § 633B.114. Falling below this fiduciary standard of conduct would therefore constitute “incompetence.” *Deegan, Id.* at 6. We conclude this level of incompetence is reasonably related to anticipated obligations of care owed by a licensed insurance producer to his customers.

31. “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)).

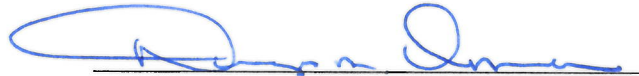
32. The word “dishonest” has plain and ordinary meaning. Yet, it can be defined as “characterized by lack of truth, honesty, or trustworthiness.” *Diamond, Id.* at 56 (Citing Dictionary by Merriam-Webster, <https://www.merriam-webster.com/>).

33. After reviewing and considering all of the facts, we find that Mulvehill’s conduct, along with his efforts to minimize the severity of his past wrongdoing, is cause to refuse to issue to him an insurance producer license at this time.

**ORDER**

IT IS THEREFORE ORDERED that we refuse to issue a nonresident individual insurance producer license to Michael P. Mulvehill.

Dated this 22<sup>nd</sup> day of April, 2021.



DOUGLAS M. OMMEN  
Iowa Insurance Commissioner

Copies to parties and counsel.

**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 April 22, 2021.

- By:  First Class Mail  
 Personal Service  
 Restricted certified mail, return receipt  
 Email, by consent  
 Certified mail, return receipt  
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Signature: 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 OF FINAL ORDER IMPACT**

A final order of license refusal 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.