

4. Muhlstein did not respond to the Division's motion and on December 22, 2021, the Commissioner issued an interlocutory order of default pending a final hearing on monetary relief and issuance of a final order.

5. The hearing on monetary relief was held on January 11, 2022. Muhlstein did not appear or participate in the proceeding.

II. PARTIES AND JURISDICTION

6. 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 191—15 Unfair Trade Practices pursuant to Iowa Code § 505.8.

7. Muhlstein is an individual with a last-known residence and mailing address of 207 East High Street, Toledo, Iowa 52342, but his current whereabouts may be unknown.

8. Muhlstein is and has been licensed in the state of Iowa as a resident insurance producer since May 28, 2014. He is licensed under National Producer Number 17278121.

9. Pursuant to Iowa Code § 505.28, Muhlstein consented to the jurisdiction of the Commissioner of Insurance by committing acts governed by chapters 507B and 522B.

10. From on or about February 9, 2021, to present, Muhlstein engaged in acts and practices within the state of Iowa constituting cause for probation, suspension, or revocation of his insurance producer license; cease and desist orders; and civil penalties or other relief under Iowa Code chapters 505, 507B, 522B, and rules adopted pursuant to these chapters.

III. FINDINGS OF FACT

11. Muhlstein applied for a resident insurance producer license with the Division by submitting through the National Insurance Producer Registry a Uniform Application for

Individual Producer License (“Uniform Application”). In submitting the Uniform Application, Muhlstein designated the Commissioner as an agent for service of process.

12. The Division issued Muhlstein a license as a resident insurance producer on May 28, 2014, and assigned to him National Producer Number 17278121.

13. Muhlstein worked as an independent contractor for PMA USA as an insurance sales representative from May 13, 2019, until September 6, 2020. PMA USA is comprised of independent contractors representing Washington National Insurance Company (“Washington National”).

14. Muhlstein was contracted with Washington National from May 13, 2019, until he was terminated by Washington National effective September 6, 2020.

Consumers Mr. FS and Mrs. SS

15. At all times relevant hereto, Mr. FS and Mrs. SS, a married couple, were residents of Iowa.

16. On or about February 9, 2021, Muhlstein came unannounced to the home of Mr. FS and Mrs. SS.

17. Muhlstein represented to Mr. FS and Mrs. SS that he was an agent for Washington National as well as a number of other insurers.

18. Muhlstein provided Mr. FS and Mrs. SS with two business cards: one stating he was an insurance agent for Heartland Retirement Group and one stating he was an insurance sales representative of PMA USA/Washington National.

19. Muhlstein acted like he knew Mr. FS and Mrs. SS, but neither Mr. FS and Mrs. SS recall meeting or speaking with Muhlstein prior to his visit in February 2021.

20. Mr. FS and Mrs. SS had several Washington National policies throughout the years. Muhlstein asked to see copies of their Washington National policies, but Mr. FS declined to provide any policy documents.

21. Despite this, Muhlstein appeared to have prior knowledge of Mr. FS and Mrs. SS' policies and began discussing details of their various Washington National policies without them providing any information or copies of the policies for Muhlstein to review.

22. Muhlstein recommended that Mrs. SS cancel two of her Washington National policies because the policies did not contain return of premium riders.

23. Muhlstein recommended that Mrs. SS replace the two Washington National policies with a CIGNA limited benefit policy he claimed contained a return of premium benefit.

24. Mrs. SS applied for and was issued a CIGNA Lump Sum Cancer policy with a Lump Sum Heart and Stroke Rider, underwritten by Loyal American Insurance Company.

25. Muhlstein indicated on the application that the CIGNA policy was intended to replace Mrs. SS's Washington National policy ending in 9242.

26. However, Mrs. SS's Washington National limited benefit policies ending in 9242 and 9239 were terminated effective October 17, 2018, and were no longer in force at the time of Muhlstein's sales presentation.

27. Also, despite Muhlstein recommending that Mrs. SS replace her Washington National policies because they did not contain a return of premium rider and representing that the new CIGNA policy did include a return of premium benefit, Muhlstein failed to select the return of premium rider option on the application.

28. Even if Muhlstein had selected the return of premium rider option on the CIGNA application, Mrs. SS was ineligible to receive the rider because the associated maximum issue age was 74 and Mrs. SS was 85 years old at the time of application.
29. Muhlstein is the listed agent of record on the application.
30. The Lump Sum Cancer policy, ending in 2292, was issued to Mrs. SS effective February 10, 2021, with a monthly premium amount of \$129.60.
31. On or about February 21, 2021, Mrs. SS received two letters from Washington National dated February 15, 2021, stating the request to cancel policies ending in 9239 and 9242 could not be processed because the policies had already been terminated years prior on October 17, 2018.
32. Upon receiving the two letters from Washington National, Mr. FS and Mrs. SS contacted their daughter, Ms. RE, and explained what had occurred. Ms. RE recalled that Mrs. SS's Washington National policies had been terminated years prior because she assisted her parents in cancelling the policies in 2018.
33. Ms. RE contacted Mr. KE, the agent of record on one of Mr. FS's Washington National policies.
34. Mr. KE informed Ms. RE that Muhlstein was no longer an agent for Washington National. Thereafter, Mr. FS and Mrs. SS contacted CIGNA to cancel Mrs. SS's cancer policy and requested a refund.
35. CIGNA canceled Mrs. SS's cancer policy and refunded all premiums paid.
36. On March 5, 2021, Ms. RE filed a complaint with the Division on behalf of her parents.

Division's Communication Attempts with Muhlstein

37. On May 10, 2021, a Division analyst emailed Muhlstein a letter to the email address provided by Muhlstein and noted in his licensing record. The letter requested information as part of the Division's investigation into the complaint filed on behalf of Mr. FS and Mrs. SS.

38. The Division analyst did not receive a response from Muhlstein or a message indicating that the email failed to be delivered.

39. The Division analyst sent Muhlstein a follow-up email on May 27, 2021, again requesting a response.

40. The Division analyst did not receive a response from Muhlstein or a message indicating that the follow-up email failed to be delivered.

41. On May 27, 2021, the Division analyst attempted to reach Muhlstein by telephone, using the telephone number provided by Muhlstein and noted in his licensing record. The Division analyst left a voicemail when Muhlstein failed to answer.

42. After receiving no response, the Division sent a subpoena dated August 17, 2021 ("August Subpoena"), to Muhlstein by certified mail and email to the addresses provided by Muhlstein and noted in his licensing record.

43. No message was received indicating the August Subpoena sent by email failed to be delivered.

44. Tracking for the August Subpoena sent by certified mail confirmed that the mail was successfully delivered on or about August 19, 2021.

45. The August Subpoena directed Muhlstein to appear at the Division's office to provide evidence under oath on September 15, 2021, and to bring with him certain documents relevant to the investigation.

46. Muhlstein failed to comply with the August Subpoena and did not appear at the Division's office on September 15, 2021.

47. Muhlstein never contacted the Division to schedule an alternate date to appear for an interview nor did he provide any of the documents requested in the August Subpoena.

48. Division staff conducted a search for alternate addresses and subsequently sent a subpoena dated October 8, 2021 ("October Subpoena"), to Muhlstein by certified mail to the following addresses: 102 N. Broadway Apt. 27, Toledo, Iowa 52342 and 102 N. Broadway, Apt. 31, Toledo, Iowa 52342.

49. Tracking for the October Subpoena sent by certified mail confirmed that the mail was successfully delivered on or about October 14, 2021, to both of the addresses identified in the previous paragraph.

50. The October Subpoena directed Muhlstein to appear at the Division's office to provide evidence under oath on November 3, 2021, and to bring with him certain documents relevant to the investigation.

51. Muhlstein failed to comply with the October Subpoena and did not appear at the Division's office on November 3, 2021.

52. Muhlstein never contacted the Division to schedule an alternate date to appear for an interview nor did he provide any of the documents requested in the October Subpoena.

Respondent's Default

53. The Division filed a statement of charges against Muhlstein on November 4, 2021 alleging violations of law and grounds for license discipline under Iowa Code chapters 507B and 522B and Iowa Administrative Code chapter 15.

54. A notice of hearing was issued by the Commissioner on November 17, 2021.

55. On November 30, 2021, in accordance with Iowa Administrative Code rule 191—3.5, the statement of charges and notice of hearing were sent via restricted certified mail to Muhlstein at the address the Division had on file: 207 East High Street, Toledo, IA 52342. The Division also sent the statement of charges and notice of hearing to 102 N Broadway, Apartment 27, Toledo, IA 52342 and to 102 N Broadway, Apartment 31, Toledo, IA 52342. The certified restricted mailing to the address provided by Muhlstein was returned to the Division as “Forward Time Expired – Return to Sender.”

56. Under Muhlstein’s consent to service of process, Muhlstein was properly served as required by Iowa Administrative Code rule 191—3.5(1).

57. To date Muhlstein has not filed an answer to the statement of charges and thus failed to participate in a contested case proceeding as required by Iowa Administrative Code rule 191—3.5(3).

58. Muhlstein did not request, nor did the Division consent to, Muhlstein filing an answer beyond the twenty days of the service of the statement of charges and notice of hearing.

59. The Division filed a motion for default order on December 8, 2021. The motion for default was sent on December 8, 2021, via First Class Mail to Muhlstein’s last three known mailing addresses of 207 East High Street, Toledo, IA 52342; 102 N Broadway, Apartment 27, Toledo, IA 52342 and 102 N Broadway, Apartment 31, Toledo, IA 52342.

60. Muhlstein failed to respond to the Division’s motion for default order within ten days as required by Iowa Administrative Code rule 191—3.15(2).

61. A motion may be considered unresisted if no response is timely filed. Iowa Administrative Code rule 191—3.15(2). Muhlstein has not filed a timely written response to the Division’s motion for default order. The motion is therefore considered unresisted.

62. A party to a contested case action may move for default against a party when the party fails to file a required pleading or has failed to appear after proper service. Iowa Administrative Code rule 191—3.15(2). Muhlstein has not filed an answer to the statement of charges and has not timely filed a response to the Division’s motion for default order.

63. The Division’s motion for default should be granted.

IV. CONCLUSIONS OF LAW

COUNT ONE

Unfair or Deceptive Act or Practice

64. Under Iowa Code § 507B.3, “a person shall not engage in this state in any trade practice which is defined in this chapter, or is determined pursuant to section 507B.6 to be, an unfair method of competition, or an unfair or deceptive act or practice in the business of insurance.”

65. Under Iowa Code § 507B.4(3)(a)(1), it is an unfair method of competition and an unfair or deceptive act or practice to misrepresent the benefits, advantages, conditions, or terms of any insurance policy in any statement, sales presentation, omission, or comparison.

66. Under Iowa Administrative Code rule 191—15.8(1), producers are required to disclose the producer’s full name and the full name of the insurance company the producer will present in the sales presentation prior to commencing any insurance sales presentation.

67. Muhlstein misrepresented the benefits, advantages, conditions, or terms of Mrs. SS’s Washington National policies by falsely representing that the policies were still in force and should be replaced because they did not have return of premium riders.

68. Muhlstein misrepresented the benefits, advantages, conditions, or terms of the CIGNA policy he recommended by falsely stating that the applied for CIGNA policy contained a return of premium rider. In fact, the policy applied for did not contain a return of premium rider.

69. Prior to the sales presentation in February 2021, Muhlstein told Mr. FS and Mrs. SS that he was an insurance agent with Washington National as well as an agent for several unidentified insurers. Muhlstein also provided the consumers with a Washington National business card. However, Washington National had previously terminated its contract with Muhlstein effective September 6, 2020.

70. Muhlstein's acts and practices have been in violation of Iowa Code §§ 507B.3 and 507B.4(3) and Iowa Administrative Code rule 191—15.8(1), subjecting Muhlstein to suspension or revocation of his insurance producer license, to the imposition of a civil penalty, an order requiring Muhlstein to cease and desist from engaging in such acts or practices, the imposition of costs of the investigation and prosecution of the matter, and any other corrective action the Commissioner deems necessary and appropriate pursuant to Iowa Code §§ 505.8 and 507B.7.

COUNT TWO
Fraudulent, Coercive, or Dishonest Practices or
Demonstrating Incompetence or Untrustworthiness

71. 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.

72. Muhlstein used fraudulent, coercive, or dishonest practices or demonstrated incompetence or untrustworthiness when he represented or acted in a manner that gave the impression that Mr. FS and Mrs. SS had a prior relationship with him even though Mr. and Mrs. SS have no recollection of ever meeting Muhlstein prior to the February 2021 sales meeting.

73. Muhlstein used fraudulent, coercive, or dishonest practices or demonstrated incompetence or untrustworthiness when he represented that he was still a contracted producer

with Washington National by giving Mr. and Mrs. SS a Washington National business card and offering details about their Washington National policies as though he had access to this information as a Washington National producer.

74. Muhlstein used fraudulent, coercive, or dishonest practices or demonstrated incompetence or untrustworthiness when he made a sales recommendation without having accurate knowledge of the Washington National policies he recommended should be replaced.

75. Muhlstein used fraudulent, coercive, or dishonest practices or demonstrated incompetence or untrustworthiness when he indicated on the CIGNA application that the policy applied for was intended to replace an existing Washington National policy without verifying whether or not the policy was still in effect.

76. Muhlstein used fraudulent, coercive, or dishonest practices or demonstrated incompetence or untrustworthiness when he recommended Mrs. SS purchase a CIGNA cancer policy because it contained a return of premium rider, but failed to select the return of premium rider option on the application. Furthermore, even if Muhlstein had selected the rider, Mrs. SS was not eligible to receive the benefit due to her age at issuance.

77. Muhlstein's acts and practices have been in violation of Iowa Code § 522B.11(1)(h) subjecting Muhlstein to probation, suspension, or revocation of his insurance producer license, the imposition of a civil penalty, an order requiring him to cease and desist from engaging in such acts or practices, an order of 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 §§ 522B.11, 522B.17, and 505.8.

COUNT THREE

Failure to Cooperate and Violating a Subpoena

78. Under Iowa Code § 522B.11(1)(p), a license may be subject to probation, suspension, or revocation and civil penalties may be levied, as provided in Iowa Code § 522B.17, for failing or refusing to cooperate in an investigation.

79. Under Iowa Code § 522B.11(1)(b), a license may be subject to probation, suspension, or revocation and civil penalties may be levied, as provided in Iowa Code § 522B.17, for violating any insurance law or regulation, subpoena, or order of the commissioner or of a commissioner of another state.

80. Muhlstein failed to cooperate with an investigation by the Division's analyst regarding Muhlstein's sales presentation and recommendation to Mr. FS and Mrs. SS.

81. Muhlstein failed to cooperate in an investigation when he did not respond to the Division's May 10, 2021, letter requesting information relevant to its investigation.

82. Muhlstein failed to cooperate in an investigation and violated a subpoena by not appearing at the Division to provide evidence as required by the subpoena dated August 17, 2021.

83. Muhlstein failed to cooperate in an investigation and violated a subpoena by not appearing at the Division to provide evidence as required by the subpoena dated October 8, 2021.

84. Muhlstein did not contact the Division, at any point, to reschedule his appearance at the Division's office or to provide any documents.

85. Muhlstein's acts and practices have been in violation of Iowa Code § 522B.11(1)(p) subjecting Muhlstein to probation, suspension, or revocation of Muhlstein's insurance producer license, the imposition of a civil penalty, an order requiring Muhlstein 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.

V. CIVIL PENALTIES

86. Iowa Code §§ 507B.7 and 522B.17 provide for the imposition of a civil penalty for violations of Iowa Code chapters 507B and 522B.

87. Pursuant to Iowa Code § 507B.7, penalties of not more than \$1,000 per act of violation, not to exceed an aggregate of \$10,000, may be imposed.

88. Pursuant to Iowa Code § 507B.7, penalties of not more than \$5,000 per act or violation, not to exceed an aggregate of \$50,000, may be imposed if the person knew they were in violation of Iowa Code chapters 507B or 522B.

89. Under the three charged counts, Muhlstein committed 13 violations of Iowa insurance laws. Some of these acts, such as Muhlstein's conduct and misrepresentations that led the consumers to believe that he was a Washington National agent, are both an unfair or deceptive act under Iowa Code chapter 507B as well as a dishonest practice under Iowa Code § 522B.11(1)(h).

90. We conclude that Muhlstein's act of falsely and deceptively representing that he was an agent with Washington National despite being terminated five months earlier, was an act that Muhlstein knew or should have known was a violation of Iowa Code chapter 507B—Insurance Trade Practices Act, as identified in Count One.

91. We conclude that Muhlstein's failure to respond to the Division's two subpoenas thereby refusing to cooperate with the Division's investigation, were acts that Muhlstein knew of should

have known were a violation of Iowa Code chapter 522B—Licensing of Insurance Producers, as identified in Count Three.

92. Penalties of not more than \$1,000 per act or violation are appropriate for the other acts found in Counts One and Two.

93. The maximum civil penalties authorized by Iowa Code § 507B.7 for Muhlstein’s violations range from \$10,000 to \$25,000.

VI. ORDERS

IT IS HEREBY ORDERED that Joshua Muhlstein is in default pursuant to Iowa Administrative Code rule 191—3.22, and that judgment shall be entered against Muhlstein in favor of the Division.

IT IS FURTHER ORDERED that Joshua Muhlstein’s Iowa resident insurance producer license shall be revoked 15 days from the date of this order pursuant to Iowa Code §§ 507B.7 and 522B.11.

IT IS FURTHER ORDERED that Joshua Muhlstein shall cease and desist from engaging in the business of insurance in this state and from engaging in any of the acts, methods, or practices determined as violations herein pursuant to Iowa Code §§ 507B.7 and 522B.17.

IT IS FURTHER ORDERED that Joshua Muhlstein shall, within forty-five (45) days of this Order, pay the amount of \$10,000 in civil penalties pursuant to Iowa Code § 507B.7. Payment shall be made payable to the Iowa Insurance Division, to be credited to the Iowa Enforcement Fund to provide funds for insurance enforcement and education.

IT IS FURTHER ORDERED that Joshua Muhlstein shall, within forty-five (45) days of this Order, pay the amount of \$2,308.50 for costs of investigation and prosecution pursuant to

NOTICE OF FINAL ORDER

A default decision becomes final agency action 15 days from the date of the decision was mailed unless a motion to vacate the default decision is filed within that time period. 191 IAC 3.22(3). A motion to vacate must state all the facts upon which the moving party relies to establish good cause for failure to appear or participate at the contested case proceeding. Each fact must be substantiated by at least one affidavit by a person with personal knowledge of the fact, and the affidavit must be attached to the motion.

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

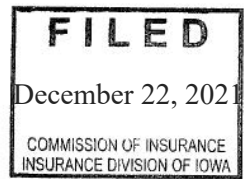
When this Order becomes final, your insurance producer license will become inactive due to revocation. While your license is inactive, you are prohibited from conducting the business of insurance. Your license will not be active until the Division makes the determination to reissue your insurance producer 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 order. It may result in criminal law enforcement authorities, including the fraud bureau of the Iowa Insurance Division, pursuing a criminal investigation or prosecution of potential criminal law violations.



BEFORE THE IOWA INSURANCE COMMISSIONER

IN THE MATTER OF)	Division Case No. 111508
)	
JOSHUA A. MUHLSTEIN,)	INTERLOCUTORY ORDER
)	OF DEFAULT
)	
)	
Respondent)	

The Commissioner has taken up for consideration the Division’s motion for default order, filed on December 8, 2021, by Ms. Johanna Nagel as the attorney representing the Iowa Insurance Division (“Division”). Muhlstein has not filed an answer to the statement of charges, nor has he responded to the Division’s motion for default order. The Division’s motion for default order is sustained.

NOW THEREFORE, the Commissioner, being fully informed of the matter, issues the following interlocutory order of default pending a final hearing on monetary relief and issuance of a final order.

1. Muhlstein failed to respond to the Division’s motion for default order within ten days as required by Iowa Administrative Code rule 191—3.15(2).
2. A motion may be considered unresisted if no response is timely filed. Iowa Administrative Code rule 191—3.15(2). Muhlstein has not filed a timely written response to the Division’s motion for default order. The motion is therefore considered unresisted.
3. A party to a contested case action may move for default against a party when the party fails to file a required pleading or has failed to appear after proper service. Iowa Administrative Code rule 191—3.15(2). Muhlstein has not filed an answer to the statement of charges and has not timely filed a response to the Division’s motion for default order.

4. Under Muhlstein's consent to service of process, Muhlstein was properly served as required by Iowa Administrative Code rule 191—3.5(1).


5. The Division's motion for default should be granted.

ORDERS

IT IS HEREBY ORDERED that Joshua A Muhlstein is in default pursuant to Iowa Administrative Code rule 191—3.22, and that judgment shall be entered against Muhlstein in favor of the Division.

IT IS FURTHER ORDERED that the parties shall appear before the Commissioner on January 11, 2021, at 9:00 a.m. for a hearing on monetary relief.

SO ORDERED on this 22nd day of December, 2021.



Douglas M. Ommen
Iowa Insurance Commissioner

Copies of this order shall be sent to the parties.