

FILED

JAN 12 2023

COMMISSION OF INSURANCE
INSURANCE DIVISION OF IOWA

BEFORE THE IOWA INSURANCE COMMISSIONER

IN THE MATTER OF
NATHAN W. TREIBEL,
and
ANTHONY PECK,
Respondents.

Division Case No. 104961

**FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
FINAL ORDER**

DECISION

Respondents Nathan W. Treibel (“Treibel”) and Anthony Peck (“Peck”) are found to have engaged in an unfair and deceptive practice in this matter when they applied an electronic marking in the names of prospective policyholders to policy applications and other important consumer notice documents even though the prospective policyholders (1) did not apply the electronic markings and (2) were not present to review the documents at the time of the markings and did not adopt the markings as their own signatures. Treibel’s resident insurance producer license is suspended for a period of 90 days, effective on March 1, 2023, or as otherwise ordered by the commissioner. Peck’s resident insurance producer license is suspended for a period of 30 days, effective on March 1, 2023, or as otherwise ordered by the commissioner. Both Treibel and Peck are prohibited from selling, soliciting, negotiating insurance, transacting any business of insurance in this state, and from providing business assistance to or facilitating the insurance business of any other person transacting any business of insurance in this state during the period of their suspensions.

Treibel is ordered to pay \$1,000 in civil penalties. Peck is ordered to pay \$1,000 in penalties. They are each ordered to pay one-half share of the costs of investigation.

On January 26, 2021, the Division filed a statement of charges against Treibel and Peck alleging that in connection with one Iowa couple, Treibel and Peck engaged in unfair and deceptive acts and practices in violation of Iowa Code §§ 507B.3 and 507B.6; fraudulent practices and demonstrating untrustworthiness under Iowa Code § 522B.11(h); and forging another's name to an application or other insurance document; each subjecting Treibel and Peck to license discipline under Iowa Code chapter 522B. The matter was called for hearing on July 27, 2022, at the Division's office located at 1963 Bell Avenue, Des Moines, Iowa 50315. The Division was represented by Enforcement Bureau attorney Johanna Nagel. Treibel and Peck appeared in person and were represented by attorneys Michael Sellers and Trent Nelson of Clive, Iowa.

At the hearing, the commissioner provided instructions to the parties on procedural matters, opening statements were made, and evidence was received. At the hearing, the following witnesses were called to testify by the Division: Mrs. JF; Mr. JF; David Sullivan, Investigator with the Division; Anthony Peck; and Nathan Treibel. The parties submitted a stipulation on documentary evidence. The Division offered documentary evidenced. Treibel and Peck testified on behalf of the defense, and submitted some documentary evidence. [The names of consumers will be removed from the published order in this matter, indicated as "Mr. JF" and "Mrs. JF", and their identities will be maintained under seal to protect their privacy.]

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. The Commissioner of Insurance, Douglas 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.

2. Nathan W. Treibel (“Treibel”) is a resident of Urbandale, Iowa. Treibel has been a resident insurance producer in the state of Iowa since June 2, 2014. His license history is found in the National Insurance Producer Registry under National Producer Number 17282921.

3. Anthony Peck (“Peck”) is a resident of Urbandale, Iowa. Peck has been a resident insurance producer in the state of Iowa since January 31, 2017. His license history is found in the National Insurance Producer Registry under National Producer Number 18300426.

4. Pursuant to Iowa Code § 505.28, both Treibel and Peck have consented to the jurisdiction of the Commissioner of Insurance by applying for an insurance producer license and by committing other acts governed by chapters 507B and 522B.

5. Both Treibel and Peck applied for resident insurance producer licenses with the Division by submitting the Iowa Uniform Applications for Individual License (“Uniform Applications”). In submitting the Uniform Applications, Treibel and Peck each designated the Commissioner as an agent for service of process.

6. During August of 2019, Treibel and Peck, engaged in acts and practices within the state of Iowa constituting cause for probation, suspension, or revocation of their insurance producer licenses; cease and desist orders; restitution; and civil penalties or other relief under Iowa Code §§ 505.8(10), 507B.3, 507B.6, 507B.7, 522B.11 and 522B.17 and rules adopted pursuant to these chapters.

7. Treibel and Peck were employed as individual insurance producers by Tylainson LLC., which does business as Heartland Retirement Group (“Heartland”) of Johnston, Iowa, under a business producer license with National Producer Number 9047601. Treibel and Peck are also

contracted with business entity producer American Senior Benefits of Olathe, Kansas, which does business under a business entity license (National Producer Number 1001001299).

8. Treibel and Peck maintain an office at Heartland's Johnston, Iowa location and are listed on Heartland's website as being part of Heartland's leadership team.

9. Treibel was appointed with Great Southern Life Insurance Company ("Great Southern") on March 6, 2019.

10. Peck was appointed with United Healthcare Insurance Company ("United Healthcare") on September 24, 2017.

Policy Application for Great Southern Plan G for Mrs. JF

11. Treibel and Peck often worked together in sales calls made at consumers' homes. They chose to work together in the sales calls made to Mr. JF and Mrs. JF during July – August of 2019.

12. Prior to the visit where a sales recommendation was made to Mrs. JF, Treibel and Peck attempted several sales calls to the home of Mrs. JF and her husband, Mr. JF. While the dates of these prior sales visits are not known with certainty, we find that Treibel and Peck made several trips together to Mr. and Mrs. JF's home in Reinbeck, Iowa because Taylor Brownrigg, the Heartland agent who had previously advised the Mr. and Mrs. JF was no longer working with Heartland. From the evidence, we find that Treibel was the principal actor in the recommendation to Mrs. JF that she cancel her Plan G Medicare policy with Bankers Fidelity and replace it with a Great Southern Life Plan G policy. The recommendation was ultimately made to Mrs. JF on August 7, 2019.

13. Treibel is a more experienced insurance producer than Peck. He previously worked as a field trainer with Heartland Retirement Group, including serving as field trainer for Taylor

Browntrigg. For a period of time during their work together Treibel had also been Peck's field trainer and "direct upline." While they were working together on sales calls in July – August of 2019, Treibel was supervising Peck.

14. Mr. and Mrs. JF are retired farmers, having begun a farming operation near Reinbeck, Iowa in 1963. Mr. JF is now 85 and Mrs. JF is 80 years old. In their testimony at hearing we found both Mr. and Mrs. JF to be very credible witnesses. We also received as very reliable corroborating evidence the recorded statements of Mrs. JF to the Division investigator on October 28, 2019 and by Mr. JF on November 13, 2019, and their original complaint to the Division on September 11, 2019.

15. Treibel asked Mrs. JF about her Bankers Fidelity policy at her home on August 7, 2019. When Mrs. JF told Treibel she was "very happy" with her Bankers Fidelity Medicare Supplement policy, Treibel commented on his role as Ms. Browntrigg's field trainer when he said, "I really did a good job, didn't I?" Despite this effort by Treibel to interest Mrs. JF in replacing her policy, gathering medical information, discussing current coverage and potential savings in lower premium, we find that Mrs. JF told Treibel at that meeting on August 7, 2019, she did not want to change her policy "in midstream" during an open claim.

16. We find that at some time during Treibel's sales call on August 7, 2019, Mrs. JF did sign a document. She testified at hearing that she believed the document that she signed was related to her husband's application and not insurance with Bankers Fidelity. The original document or best evidence was not produced. A copy that had been sent by telefacsimile to Bankers Fidelity on August 13, 2019, was received into evidence, but we are unable to determine the authenticity of what purports to be Mrs. JF's signature. Treibel's and Peck's testimony that Mrs. JF signed the cancellation document is uncorroborated and remains disputed by Mrs. JF. We are unable to

find that Mrs. JF signed the cancellation document or that she was aware of the document's contents.

17. Despite Mrs. JF's communication to Treibel on August 7, 2019, that Mrs. JF did not intend to apply for a Great Southern policy, on August 13, 2019, Treibel affixed electronic markings purporting to be the genuine signatures of Mrs. JF on at least three occasions on three separate documents, when in fact the markings were not applied by Mrs. JF. However, even if we had found that Mrs. JF had expressed some general interest in the application, we find by overwhelming evidence that Mrs. JF did not authorize Treibel's method of affixing electronic markings to look as if they had been applied to the insurance documents in question by Mrs. JF.

18. Several days later, Mrs. JF received a call from a Bankers Fidelity representative during which the representative asked if she wanted to cancel her policy. Mrs. JF told them "absolutely not." On August 16, 2019, Mrs. JF sent a handwritten letter advising Bankers Fidelity to not cancel her policy.

19. Mrs. JF then received a welcome letter dated August 19, 2019, from Great Southern indicating she had received coverage. This mailing included a copy of an insurance policy application that appeared to have been electronically signed by Mrs. FJ. The marking on the application was applied electronically on August 13, 2019 at 11:26:10 A.M. From Mrs. JF's testimony, Treibel's testimony and comparisons to known signatures and other evidence received, we conclude the Great Southern Life policy application does not contain Mrs. JF's genuine electronic signature. We find the marking was applied by Treibel.

20. The Great Southern Life policy application also contained a number of material inaccuracies. On page one, Mrs. JF's middle initial is not "W." On page 3, Part VIII, in response to Question 2a, the correct answer would be "yes," as Mrs. JF had been hospitalized within the

prior six months. On page 4, Part VIII, in response to Question 6a and b, the correct answers would be “yes,” as Mrs. JF was awaiting cataract surgery and was continuing to receive medical treatment for her ankle replacement. On page 4, Part VIII, in response to Question 12b, the correct answer would be “yes,” as Mrs. JF had not yet recovered from an ankle replacement.

21. The attestation above the signature line for the applicant reads as follows:

I FULLY UNDERSTAND the questions contained in this Application. To the best of my knowledge and belief, the answers I provided are true and complete. I understand the Company may conduct a telephone interview with me regarding the answers. I understand and agree the coverage applied will not take effect until issued by the Company, and that the agent is not authorized to extend, waive or change any terms, conditions or provisions of the coverage.

Caution: If your answers on this Application are incorrect or untrue, the Company has the right to deny benefits or rescind your coverage.

22. The marking on the Health Information Authorization form, which is required to comply with the HIPAA Privacy Rule, also bears an inauthentic marking that was applied electronically on August 13, 2019 at 11:26:13 A.M. From Mrs. JF’s testimony, comparisons to known signatures and other evidence received, we conclude the health information authorization does not contain Mrs. JF’s genuine electronic signature. We find the marking was applied by Treibel.

23. The signature on the Medicare Supplement replacement notice, which is intended to comply with insurance regulations, also bears an inauthentic marking that was applied electronically on August 13, 2019 at 11:26:16 A.M. From Mrs. JF’s testimony, comparisons to known signatures and other evidence received, we conclude the Medicare Supplement replacement notice does not contain Mrs. JF’s genuine electronic signature. We find the marking was applied by Treibel.

24. Upon reviewing all of the information from Great Southern Life, Mrs. JF sent a request to cancel the Great Southern Life policy. In a letter dated September 10, 2019, Great Southern Life cancelled the policy.

25. After receiving the complaint from Mr. and Mrs. JF, the Division requested information from Treibel. In a statement signed by both Treibel and Peck and dated September 25, 2020, Treibel and Peck made a number of admissions. In this joint statement, both Treibel and Peck admitted they were acting together. Treibel and Peck admitted to knowing about her recent surgery and ongoing medical care.

26. However, Treibel's various statements about how the health information questions on the policy application were answered have been inconsistent. We did not find Treibel to be a credible witness on these issues. In the joint statement of Treibel and Peck dated September 25, 2020, Treibel stated that he "continued to the electronic application," but "[d]ue to having poor internet connection Nate could not submit the electronic application until stable connection was available, he left the completed application open and submitted once he was back in the office." Based on Mr. and Mrs. JF's complaint, statements to the investigator and testimony, along with the documentation, we find Treibel's prior statements and ultimate testimony to be unreliable. Treibel repeated a similar story about using an electronic application on his laptop during an investigative interview conducted by the Division on July 1, 2020. On October 28, 2020, at another investigative interview, Treibel stated that Mrs. JF electronically signed the policy application that was open on Peck's laptop on August 7, 2019, and that he left the application open on the laptop and then hit the submit button once back in the office on August 13, 2019.

27. While Treibel now disputes that his statements to the Division on July 1, 2020 or October 28, 2020, were under oath, we do find that the context of the interview supports a finding that Treibel fully appreciated and understood the importance of being cooperative, honest and candid in responding to Division's investigation, but lied. We find Treibel was dishonest in his statements. We find Treibel's statements on July 1, 2020 and October 28, 2020 to be unreliable.

28. When Treibel appeared for a deposition on April 7, 2021, Mr. Adam Kenworthy, a Division attorney, again questioned Treibel about the Great Southern Life policy application. Treibel's story had changed from his prior inconsistent statements, although many of the deposition statements under oath are equally unreliable:

MR. KENWORTHY: So then on August 7, 2019, did [Mrs. JF] and yourself fill out and complete a Medicare supplemental application with Great Southern Insurance?

TREIBEL: So we went through all the information, filled out all the things that we needed. It was explained that for her benefit, doing an application online would be the quickest way to go about it, and so like I said, they gave us permission. You know, like I said, I realize where the misstep was, but, you know, going through the application, going through the updated rate, there was, like I said, permission to make sure that we could do the applications online and, you know, hopefully get her rates lowered.

MR. KENWORTHY: Okay. Explain that to me. I don't understand what you are saying. There was permission to do?

So previously you stated that at that time, on August 7, 2019, you and [Mrs. JF] completed an application, and then she signed it, you signed it, and then you waited until August 13th to submit it to the carrier.

Is that previously what you stated?

TREIBEL: Yes

29. Treibel in his deposition of April 7, 2021, admitted to making previously untrue statements during interviews with the Division on these important issues. Yet, despite our inclination to give Treibel the benefit of the doubt, both his deposition testimony and much of his testimony at the hearing are unworthy of credibility. Newly recalled memory that surfaces twenty months after an event is simply not credible. We do not believe his most recent testimony that Mrs. JF gave him permission to sign her name.

30. Nevertheless, the central allegation of unfair practice and deception by the Division was admitted by Treibel. Treibel completed the policy application in his insurance office on August 13, 2019. Mrs. JF was not present. Although Mrs. JF's recollection and Treibel's own

testimony at hearing are not consistent about what occurred on August 7, it is undisputed that Mrs. JF did not review a completed policy application, the health information authorization or the replacement notice before electronic markings that Treibel intended appear as Mrs. JF's signatures were applied and submitted. Mrs. JF did not consent, validate or agree to a written agreement that was not yet completed and that she has not yet seen. Finally, it is undisputed that Treibel, not Mrs. JF, signed her name. We conclusively find that Treibel signed Mrs. JF's name on all three documents.

31. Treibel by his own testimony recognized the relative ease of legal compliance. This ease of compliance with the law must be balanced against the risk of consumer injury caused by his practice of completing and signing important policy application and consent documents that the consumer has not reviewed:

So I could have easily filled out an electronic application. I should have filled out a paper application. Moving forward, I am only getting signatures on everything because of this situation, particularly.

32. Although not a factual issue central to rendering of our decision, we find Treibel did not obtain Mrs. JF's agreement, validation or consent to the "No" answers to health information questions on the policy application. The risk of substantial consumer harm to older Iowans by not having the consumer affix their own genuine signatures after reviewing the actual completed documents was made clear in Mr. JF's testimony. Mr. JF described his telephone conversation with Treibel immediately after the Great Southern Life policy was issued and the policy application was reviewed by Mr. and Mrs. JF:

I called him to ask him (Treibel) – ask him why they had entered this false application on Joan. It was just totally – pretty much totally false answers, and without her signature on it. It was kind of a forged signature. And I told him we need to sit down and talk about it and that, you know, I wanted to get – know why they do something like that, because she was in the middle of this healing process.

And he kind of got talking over me, told me that I didn't know what I was talking about, **told me that it would be his word against mine**, and so things kind of escalated a little bit, and then the conversation was over with.

He said he wasn't going to come – they weren't going to come back up because they had been there two or three times, and they weren't going to come back.

(Emphasis added).

33. Further, although not a factual issue central to our decision, we find Mr. and Mrs. JFs' testimony to be persuasive and the evidence to be clear and convincing that Mrs. JF did not authorize Triebel to apply signatures on her behalf to the policy application, the health information authorization or the replacement notice.

34. We also find that Treibel misrepresented in the replacement notice that Mrs. JF had reviewed the policy application.

35. When Treibel completed and signed at his office a policy application in Mrs. JF's name on August 13, 2019, he failed to comply nearly all insurance company written guidance and requirements pertaining to electronic policy applications.

36. Peck also submitted to investigation interviews on July 1, 2020 and October 28, 2020. Although we will cover the facts concerning Mr. JF's policy application with United Healthcare in greater detail below, we will address his testimony as related to Mrs. JF here.

37. On April 7, 2021, Peck sat for a deposition conducted by Mr. Adam Kenworthy, a Division attorney. Peck admitted that he had given dishonest responses in the prior investigative interviews. Peck admitted that he did not "keep the browser open" as previously stated. He then testified in his deposition that Mr. JF gave him "permission" to submit the application electronically. Although asked directly, Peck never testified that Mr. JF gave him permission to affix a signature. Most significantly here with respect to the application for a Great Southern Plan G for Mrs. JF, Peck's testimony concerning Mrs. JF and Treibel was as an observer, not an

actor. We find Peck to be a biased and at times unreliable witness, but he was not an actor in the conduct related to Mrs. JF. Although present in the room at the discussion on August 7, 2019, Peck was not present when Treibel affixed a signature in the name of Mrs. Peck to three documents on August 13, 2019. We do not find that Peck acted in a manner that he would render him liable for Treibel's actions.

Policy Application for United Healthcare Plan G for Mr. JF

38. From the evidence, we find that Peck was the primary actor in the recommendation to Mr. JF that he cancel his Plan F Medicare supplement policy with Wellmark and replace it with a United Healthcare Plan G.

39. On August 7, 2019, from all of the evidence and testimony, we find that Peck did discuss with Mr. JF the application items. We find that the information that was submitted in the United Healthcare application was accurate. However, we find that Mr. JF did not review and sign the completed seven-page United Healthcare application. Of particular note, we find that Mr. JF did not review the authorization and verification provisions on page 6 of the United Healthcare application. Neither did Mr. JF review and sign the replacement notice for the United Healthcare Plan G.

40. Peck applied on August 9, 2019, electronic signatures in the name of Mr. JF to page 5 and under the authorization and verification provisions on page 6 of the United Healthcare application. Peck also applied on August 9, 2019, an electronic signature in the name of Mr. JF to the replacement notice for the United Healthcare Plan G.

41. We find that Mr. JF did not authorize Peck to sign Mr. JF's name, but further find Peck's claim of authorization to apply for insurance to be immaterial to the issue of applying an

electronic marking in the name of Mr. JF that was made to look like it had been applied by Mr. JF.

42. As set forth above, Peck also made dishonest statements to Division investigators concerning his conduct for Mr. JF. As previously referenced, on April 7, 2021, Peck sat for his deposition conducted by Mr. Adam Kenworthy, a Division attorney. Peck admitted that he had given dishonest responses in the prior investigative interviews. Peck admitted that he did not “keep the browser open” as previously stated. However, he then testified in his deposition that Mr. JF gave him “permission” to submit the application electronically. We do not find that an electronic marking can be made to be an effective or legally binding electronic signature through this “permission.” Further, we find Peck’s testimony to be unreliable.

43. As Peck’s supervisor we do find that Treibel acted together with and may have aided Peck in his application of electronic signatures in the name of Mr. JF to the policy application and other relevant insurance documents requiring Mr. JF’s review and signatures. However, we find that justice is furthered by holding both Treibel and Peck responsible for their own individual conduct. Therefore, we do not find that Treibel acted in a manner that renders him liable for Peck’s actions.

44. The Division’s costs of investigation were \$3022.50.

III. CONCLUSIONS OF LAW

45. 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 DeVries*, No. 103128, 2021 WL 1202188, (Iowa Ins. Div., March 26, 2021), at 22; *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. *DeVries, Id.* at 22; *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.

46. 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:

* * *

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.

COUNT I
Unfair and Deceptive Acts and Practices

47. In its statement of charges, the Division alleged under Count I that Treibel and Peck engaged in unfair and deceptive acts and practices. Although evidence was received to support the conclusion that Treibel and Peck may have acted together and would be jointly liable for each other's conduct, we choose to consider them separately.

Unfair and Deceptive Acts and Practice by Treibel

48. We first take up the unfair and deceptive acts and practices involved in Treibel's submission of documents on August 13, 2019 related to a Medicare Supplement policy application with Great Southern Life. We note that this is the second disciplinary contested case

against a producer that has gone to hearing in recent years involving the use of electronic records in the business of insurance. The earlier case raised some of the same issues. *In the matter of DeVries, Id.* When an agent engages in a practice of applying an electronic marking to a document in the name of the consumer, so that the document cannot be authenticated, and the consumer's mutual assent cannot be presumed, the likelihood of injury is demonstrated because a lengthy Division investigation and ultimately hours of contested case testimony are required to determine whether the consumer reviewed and assented to the terms of routine insurance application documents.

49. 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. *DeVries, Id.* at 22; *Diamond, Id.* at 36.

50. 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.) *DeVries, Id.* at 23; *Diamond, Id.* at 36; *In the matter of Newman*, No. 91936, 2017 WL 6504574 (Iowa Ins. Div., Jan. 24, 2017) at 8.

51. 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.

52. 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; *DeVries, Id.* at 23; *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; *DeVries, Id.* at 23; *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).

53. 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).

54. 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. *DeVries, Id.* at 24; *Diamond, Id.* at 37; *Newman, Id.* at 9.

55. 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. *DeVries, Id.* at 24; *Diamond, Id.* at 38. To the contrary, we conclude judicial and administrative decisions interpreting these laws may provide persuasive precedent.

56. 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. *DeVries, Id.* at 25; *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. *DeVries, Id.* at 25; *Diamond, Id.* at 38; *Newman, Id.* at 9-10; *Vertrue, Id.* at 33-34.

57. 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.

58. We have determined that the conduct of Treibel in his submission of documents on August 13, 2019 related to a Medicare Supplement policy application with Great Southern Life is both unfair and deceptive.

59. The business of insurance is founded in principles of contract law. The commissioner and Iowa courts are frequently called upon to interpret these contracts. See, *Boelman v. Grinnell Mutual Reinsurance Company*, 826 N.W.2d 496, 501 (Iowa 2013); *Royal Indemnity Co. v. Factory Mutual Insurance Co.*, 786 N.W.2d 839 (Iowa 2010). The Division receives and reviews the insurance contracts, policy applications and other documents related to Medicare supplement insurance under the authority of Iowa Code chapter 514D and Iowa Administrative Code 191—chapter 37. All such contracts and other consumer notices are required to be written and filed with the Division. As a party to these contracts, a policyholder’s mutual assent to the terms of the contract is required in every case. Opportunity to review an application and provide a signature is the customary method to evidence policyholder agreement to obtain insurance coverage.

60. However, modern-day policyholders and producers alike wish to be able to conduct this business of forming insurance contracts in an electronic medium. Despite the relative ease and convenience of electronic transactions, insurance producers do not have authority to ignore important legal principles of mutual assent, contract formation or legal requirements for effective consumer notice.

61. Iowa Code § 554D.103(8) defines “electronic signature” to mean “an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.” (Emphasis added.) Treibel’s conduct did not present any opportunity for Mrs. JF to “execute or adopt” the electronic markings applied by Treibel on

August 13, 2019. Mrs. JF had never seen the completed records as of that date, so she cannot be held to have intended to sign them. Treibel's conduct of applying electronic markings in the name of Mrs. JF did not form a contract. Neither did Treibel's conduct constitute effective notice to Mrs. Treibel of her rights under the replacement notice, nor could Great Southern Life enforce their rights to cancel coverage for misrepresentation when Mrs. JF did not review and attest to the information on the application. Despite the illusion created by Treibel's conduct, no insurance contract was bound.

62. Iowa Code § 554D.111 provides:

1. An electronic record or electronic signature is attributable to a person if it was the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.
2. The effect of an electronic record or electronic signature attributed to a person under subsection 1 is determined from the context and surrounding circumstances at the time of its creation, execution, or adoption, including the parties' agreement, if any, and otherwise as provided by law.

63. The evidence is uncontroverted that Treibel completed the policy application in Mrs. JF's name in his insurance office on August 13, 2019. Mrs. JF was not present. Mrs. JF did not review a completed policy application, the health information authorization, or the replacement notice before Treibel applied electronic markings purporting to be Mrs. JF's.

64. Mrs. JF did not consent, validate or agree to a written agreement or documents that she had not seen. We conclusively find that Treibel signed Mrs. JF's name on all three documents. These are not valid electronic signatures under the requirements of Iowa Code § 554D.111. Treibel's conduct violates both the spirit and letter of the public policy expressed by Iowa Code §554D.111.

65. Treibel applying an electronic marking in the name of Mrs. JF on a completed policy application – that she had not reviewed – was likely to cause, and in fact did cause, substantial injury to the consumer. Extrapolating Treibel’s practice to other consumers and other transactions would multiply the risk exponentially. The same must be said for Treibel applying an electronic marking in the name of Mrs. JF on the health information authorization and on the replacement notice. We determine that Treibel engaged in an unfair practice.

66. Treibel’s conduct is also deceptive because it did initially mislead Great Southern Life to believe that Mrs. JF intended to apply her signatures to a completed policy application, the health information authorization, and the replacement notice.

67. Treibel’s acts and practices have been in violation of Iowa Code §§ 507B.3 and 522B.11 subjecting Treibel to suspension or revocation of his insurance producer license, to the imposition of a civil penalty, an order requiring Treibel 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 §§ 522B.17, 507B.7 and 505.8.

Unfair and Deceptive Acts and Practice by Peck

68. The Division proved that Peck applied on August 9, 2029, electronic markings in the name of Mr. JF to page 5 and under the authorization and verification provisions on page 6 of the United Healthcare application. We found that Mr. JF did not review and sign the completed seven-page United Healthcare application, and did not review the authorization and verification provisions on page 6 of the United Healthcare application.

69. Peck also applied on August 9, 2019, an electronic marking in the name of Mr. JF to the replacement notice for the United Healthcare Plan G. Mr. JF did not review and sign the replacement notice for the United Healthcare Plan G.

70. These are not valid electronic signatures under the requirements of Iowa Code §554D.111. Peck's conduct also violates both the spirit and letter of the public policy expressed by Iowa Code § 554D.111.

71. The actual harm to Mr. JF and the insurer – caused by Peck applying electronic markings in the name of Mr. JF on a completed policy application that he did not review – was mitigated because the information on the application was correct. We conclude that when Peck improperly applied the electronic marking on August 9, 2019, he was acting in contravention of Iowa Code § 554D.111, but did not cause injury. Nevertheless, we determine that his conduct “was likely to cause substantial injury.” We further conclude that when on August 9, 2019, Peck applied an electronic marking to the replacement notice for the United Healthcare Plan G, his practice violated Iowa Code 554D.111 and in doing so, was likely to cause injury to Mr. JF, because he was not apprised of his consumer rights. Extrapolating Peck's practice to other consumers and other transactions would multiply the risk exponentially. We conclude that Peck engaged in an unfair practice.

72. Peck's conduct on August 9, 2019, is also deceptive because it did initially mislead United Healthcare to believe that Mr. JF intended to apply his signatures to a completed policy application and the replacement notice.

73. Peck's acts and practices have been in violation of Iowa Code §§ 507B.3 and 522B.11 subjecting Peck to suspension or revocation of his insurance producer license, to the imposition of a civil penalty, an order requiring Peck 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 §§ 522B.17, 507B.7 and 505.8.

COUNT II

Fraudulent or Dishonest Practices and Demonstrating Incompetence or Untrustworthiness

74. We now take up the charges in Count II 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, 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.” While Iowa Code § 522B.11(h) often reaches a very broad range of disqualifying conduct and circumstances, the Division’s charges under Count II were limited to entering data into an internal reporting system and to statements made to Division investigators.

75. The Division alleged that Treibel and Peck “entered fraudulent data” into an internal commission reporting system. 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. *DeVries, Id.* at 28; *Gomez, Id.* at 4. The word “dishonest” has plain and ordinary meaning. Yet, it can be defined as “characterized by lack of truth, honesty, or trustworthiness.” *DeVries, Id.* at 28;

Diamond, Id. at 56 (Citing Dictionary by Merriam-Webster, <https://www.merriam-webster.com/>). While submitting fraudulent data could constitute a fraudulent practice, the Division did not prove there was any impact or outcome from the alleged data representation. While reliance may not be a required element for all of the species of fraud covered under Iowa Code § 522B.11(1)(h), we do conclude it to be an element for the “fraudulent data” submission conduct as alleged by the Division.

76. The Division failed to prove Treibel or Peck submitted fraudulent data.

77. The Division also alleged that Treibel and Peck “demonstrated untrustworthiness” in statements made to Division investigators. 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. *DeVries, Id.* at 28; *Diamond, Id.* at 55. *In the matter of Tommy McCellan-Bey*, No. 956516, 2018 WL 8220766, at 5 (Iowa Ins. Div., Oct. 12, 2018).

78. The Division did prove that Treibel and Peck each made statements to investigators that were false and misleading. Certainly, the nature and circumstances of their statements raise significant questions concerning the veracity of the producers’ statements and the credibility and integrity of the producers. Each of these facts relate to Treibel’s and Peck’s trustworthiness. However, the issue before us is whether the Division has proven that Treibel and Peck have “demonstrated untrustworthiness.” Under Count II, we consider not only the statements made to investigators, but all of the evidence of unfair and deceptive acts and practices proven in Count I. In doing so, although it is a close question, we do not believe that the Division has proven that the conduct of Treibel and Peck reveals such flaws in fitness and character to have “demonstrated untrustworthiness.”

79. The Division failed to prove in the manner the Division has pled the allegations, that Treibel and Peck have “demonstrated untrustworthiness” so as to be disqualified from holding insurance producer licenses.

COUNT III
Forging Another’s Name to An Application

80. 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.

81. “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.

82. Unlike Counts I and II, 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 III our findings concerning Treibel’s actions and Peck’s actions related to applying electronic markings of Mr. and Mrs. JF.

83. Both Treibel and Peck submitted applications for insurance policies – applying electronic markings purporting to be genuine signatures – while knowing these consumers had not fully reviewed the policy applications, 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. While the Division may have established Treibel and Peck either knew or recklessly disregarded their obligations for assisting customers prepare, understand and sign truthful, accurate and complete documents, the question of intent to defraud was not answered. The Division evidence was limited to two consumers. The modest amount of commission at stake did not establish the producers' fraudulent intent.

84. Treibel and Peck both testified that they would not repeat the conduct.

85. As we found in Count I, the practice was unfair and deceptive. We do not find that this practice was committed with the intent to defraud.

86. Division's evidence failed to prove that Triebel or Peck acted with the intent to defraud or injure the consumers.

87. The Division failed to prove Treibel or Peck committed forgery.

FINAL ORDERS

WHEREFORE, IT IS ORDERED, pursuant to the powers granted to the Commissioner of Insurance by Iowa Code chapters 505, 507B and 522B:

- A. Treibel's resident insurance producer license is suspended for a period of 90 days beginning on March 1, 2023, or such other time ordered by the commissioner pursuant to Iowa Code §§ 507B.7 and 522B.11;
- B. Triebel 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. Triebel, pursuant to Iowa Code §§ 507B.7 and 522B.17, is permanently prohibited from applying an electronic signature to any document on behalf of any prospective policyholder or policyholder, irrespective of consent;
- D. Triebel, pursuant to Iowa Code §§ 507B.7 and 522B.17, is permanently required – whenever witnessing any electronic signature in the business of insurance – to comply with relevant insurance company policies, procedures, guidance and manuals for electronic signatures, and to make and maintain a journal to document all such electronic signatures, including the date, printed name of signer, and a handwritten signature of signer;
- E. Triebel, within 30 days of this Order, pay a civil penalty in the amount of \$1,000.00, 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. Triebel, within 30 days of this order, pay pursuant to Iowa Code § 505.10, as costs of investigation, the amount of \$1511.25 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;
- G. Peck’s resident insurance producer license is suspended for a period of 30 days beginning on March 1, 2023, or such other time ordered by the commissioner pursuant to Iowa Code §§ 507B.7 and 522B.11;

- H. Peck 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;
- I. Peck, pursuant to Iowa Code §§ 507B.7 and 522B.17, is permanently prohibited from applying an electronic signature to any document on behalf of any prospective policyholder or policyholder, irrespective of consent;
- J. Peck, pursuant to Iowa Code §§ 507B.7 and 522B.17, for a period of one year from June 1, 2023 through May 31, 2024, is required – whenever witnessing any electronic signature in the business of insurance – to comply with relevant insurance company policies, procedures, guidance and manuals for electronic signatures and to make and maintain a journal to document all such electronic signatures, including the date, printed name of signer, and a handwritten signature of signer;
- K. Peck, within 30 days of this Order, pay a civil penalty in the amount of \$1,000.00, 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;
- L. Peck, within 30 days of this order, pay pursuant to Iowa Code § 505.10, as costs of investigation, the amount of \$1511.25 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; and
- M. 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 12th day of January, 2023.

/s/ Douglas M. Ommen
DOUGLAS M. OMMEN
Iowa Insurance Commissioner

Copies to:
Johanna Nagel
Iowa Insurance Division
1963 Bell Avenue, Suite 100
Des Moines, Iowa 50315
Attorney for the Division

Michael Sellers
Trent Nelson
Sellers, Foxhoven, Galenbeck & Nelson
8230 Hickman Road
Clive, Iowa 50325

