

BEFORE THE IOWA INSURANCE COMMISSIONER

IN THE MATTER OF

AMBER MARIE SMITHEY,
NPN 20803772
DOB 08/08/XXXX

Respondent.

Division Case No. 120518

FINAL ORDER

NOW THEREFORE, the Commissioner takes up for consideration the attached Proposed Default Order of Administrative Law Judge, Jasmina Sarajlija, of the Iowa Department of Inspections and Appeals shown as filed on October 1, 2024.

IT IS ORDERED that the Commissioner has reviewed the record and adopts Judge Sarajlija's default order as my own final decision.

IT IS FURTHER ORDERED that Amber Marie Smithey has 30-days from the date of this Order to pay restitution in the amount of \$12,799.80, civil penalties of \$5,000, and investigation and prosecution costs of \$878.75.

IT IS FURTHER ORDERED that these orders may be enforced under Iowa Code chapter 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.

Dated this 2nd day of October, 2024.


DOUGLAS M. OMMEN
Iowa Insurance Commissioner

Copy to:

Zebulon Black
Iowa Insurance Division
1963 Bell Avenue, Suite 100
Des Moines, IA 50315
Zebulon.black@iid.iowa.gov
ATTORNEY FOR THE DIVISION

Amber Smithey
4720 W Davis St
Bremerton, WA 98312
RESPONDENT

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause, or their attorney, at their respective addresses disclosed on the pleadings on October 3, 2024.

By: First Class Mail Personal Service
 Restricted certified mail, return receipt Email
 Certified mail, return receipt _____

Signature: Brooke Hohn
Brooke Hohn

6. Smithey applied for a nonresident insurance producer license with the Division by submitting a Uniform Application for Individual Producer License (“Uniform Application”) through the National Insurance Producer Registry. In submitting the Uniform Application, Smithey designated the Commissioner as an agent for service of process.

8. On August 8, 2023, Smithey was appointed by American Pet Insurance Company (“APIC”) as a captive agent.

9. On October 24, 2023, APIC notified the Division of its decision to terminate Smithey’s appointment for cause due to Smithey submitting potentially fraudulent claims with APIC. APIC alleged that Smithey submitted invoices that she fabricated for services that were not provided to her pet, and provided fabricated veterinary records in an attempt to prove that the services were in fact provided to her pet.

10. On July 1, 2023, Trupanion issued Smithey a pet insurance policy. The policy was underwritten by APIC. Smithey received this policy for free as a benefit of her employment with APIC. The policy included coverage for one dog. The Trupanion policy covered ninety percent (90%) of the covered services but did not cover taxes or examination fees.

11. On August 19, 2023, Smithey submitted a claim for veterinary care under the Trupanion policy. Smithey claimed that she sought veterinary treatment for her dog at Banfield Pet Hospital-Silverdale (“Banfield”) because her dog broke its leg and was limping after jumping off a table. Smithey submitted receipts for a total claimed value of \$1,289.00. On September 1, 2023, Trupanion approved the claim at the covered rate minus any noncovered services and direct deposited \$1,160.10 into Smithey’s bank account.

12. On September 12, 2023, Smithey submitted a second claim for veterinary care. Smithey claimed that she sought veterinary care for her dog at Kitsap Animal Hospital (“Kitsap”) because her dog had an obstructed bowl. The invoice listed Kitsap’s location as 2671 W Gallo St, Bremerton WA 98311. Smithey submitted an invoice showing that Smithey paid \$14,345.64 for the services performed. On September 21, 2023, Trupanion approved the claim at the covered rate and direct deposited \$11,639.70 into Smithey’s bank account. The claim contained an examination fee and taxes that were not covered under the policy.

13. On September 27, 2023, Smithey submitted a third claim for veterinary care. Smithey claimed that she sought veterinary care for her dog at Kitsap for septicemia following surgery. Smithey submitted an invoice showing that Smithey paid \$12,229.92 for the services performed. The invoice submitted contained the same facility address and contact phone number as the previous Kitsap invoice.

14. Trupanion attempted to collect incident history for the third claim, without success. Trupanion could not locate any information for a Kitsap veterinary clinic online, and the physical address for Kitsap listed on the invoice was not associated with Kitsap or any veterinary clinic. This discovery triggered an internal investigation into all three of Smithey's claims.

15. On September 30, 2023, Smithey reached out to Trupanion to inquire about the delay in processing her claim. In response, Trupanion requested veterinarian records and visit notes associated the third claim involving the visit to Kitsap.

16. APIC investigated Smithey's third claim. APIC discovered that the phone number listed on the Kitsap records and invoices was associated with a robocaller. APIC investigators called the phone number, and the call went to a generic voicemail. The investigators left a voicemail, but the call was not returned. This was the same contact information listed in the second claim invoices.

17. APIC could not verify that "A.B." the veterinarian listed on the two Kitsap invoices from the second and third claim was a licensed veterinarian in the state of Washington. APIC also found that the alleged treatment in both the second and third claim did not match standard practices for such conditions in other veterinarian practices. Further, certain purported costs for the same services differed between the two Kitsap invoices. For example, for overnight stays the Kitsap invoice submitted in the second claim charged \$550.00 per night while the Kitsap invoice submitted in the third claim charged \$1,500.00 per night. None of the information for both the second and third claim could be verified.

18. APIC also contacted Banfield to validate the invoice from the first claim. Banfield stated that Smithey's last appointment for her dog was on May 11, 2023. Banfield had no record of providing treatment to Smithey's dog on August 19, 2023. Further, APIC discovered that the invoice Smithey submitted with her claim for the alleged visit on August 19, 2023, listed an inaccurate address for Banfield.

19. APIC terminated Smithey's employment and requested that Smithey reimburse APIC \$12,799.80 for the fraudulent claims made under her Trupanion policy. To date, Smithey has not reimbursed Trupanion.

20. On October 24, 2023, the Division received notification from APIC of Smithey's termination for cause.

21. On October 25, 2023, a Division investigator sent a Request for Information ("RFI") and Termination for Cause ("TFC") questionnaire to Smithey to the email address listed in Smithey's Division licensing records,

cybermaster3141592@gmail.com. The Division did not receive any indication that the email failed to be delivered. To date, Smithey has not responded to that email.

22. On November 6, 2023, the Division investigator mailed a second RFI and TFC to Smithey's home address listed in her Division licensing record, 4720 Davis Rd. W., Bremerton, WA 98312, by FedEx delivery. On November 7, 2023, the package was successfully delivered to this address and was signed for by A. Smithey. To date, Smithey has not responded to this second RFI and TFC.

23. On November 17, 2023, the Division investigator called Smithey at the resident phone number listed in her Division licensing records, XXX-XXX-3665. The Division investigator left a voicemail requesting a call back from Smithey. To date, Smithey has not responded to this phone call and voicemail.

Id., at pp. 1-5. The Statement of Charges was served via restricted certified mail to an address provided by Smithey and noted in IID's licensing record for Smithey. The United States Postal Service provided IID the proof of delivery that indicated the mailing was delivered to Smithey on August 29, 2024, at 12:33PM. Further, on August 27, 2024, IID sent the Statement of Charges via email to one email address provided by Smithey and noted in IID's licensing record for Smithey. IID received no notification that the email was not delivered successfully. Mot. Exs. 1-3. Smithey failed to file an answer within 20 days, and has otherwise failed to participate.

On September 18, 2024, IID filed a Motion for Default, arguing that Smithey was in default due to her failure to file an answer and requesting a finding in its favor on the two counts of charges. Mot. at pp. 4-5. Specifically, IID requested: the revocation of Smithey's insurance producer license with a cease and desist from engaging in the conduct charged and a prohibition against engaging in the business of insurance in Iowa; restitution in the amount of \$12,799.80; a civil penalty in the amount of \$5,000.00; and \$878.75 in investigation and prosecution costs. Id., at pp. 4-5. Smithey failed to respond. As discussed below, the unchallenged allegations made in the Statement of Charges are taken as true for purposes of this decision.

CONCLUSIONS OF LAW

A.

The Iowa legislature created IID "to regulate and supervise the conducting of the business of insurance in the state." Iowa Code § 505.1. One aspect of this authority is to regulate the licensing of insurance producers. See id. § 505.8; see also Iowa Code chapter 522B. Pursuant to this statutory authority, IID promulgated various administrative rules governing the licensing and conduct of those in the business of insurance. For example, Chapter 10 of IID's rules creates the specific rules governing the "qualification, licensure, and appointment of insurance producers." 191 I.A.C. § 10.1. Likewise, Chapter 15 of IID's

rules create the “minimum standards and guidelines” for essentially fair and honest practices in the business of insurance. 191 I.A.C. § 15.1.

When IID has reason to believe that an individual has engaged in unfair or deceptive acts or otherwise has violated the statutes and rules governing the business of insurance in the State, IID may file a statement of charges against the individual. See, e.g., Iowa Code 507B.6(1). This includes taking action against an individual’s producer license. See id. § 522B.11(1). The sanction for the misconduct can vary based on the specific practice, with fines, recovery of investigation and prosecution costs, adverse action against a licensee, and other corrective action being generally available. See, e.g., id. §§ 505.8(10)(“[IID] may, after a hearing conducted pursuant to chapter 17A, assess fines or penalties; assess costs of an examination, investigation, or proceeding; order restitution; or take other corrective action as the commissioner deems necessary and appropriate to accomplish compliance with the laws of the state relating to all insurance business transacted in the state.”); 522B.11(1) (articulating license sanctions available for misconduct).

Once IID files a statement of charges against an individual and a notice of hearing is delivered concerning the charges, a contested case proceeding is commenced. Iowa Code §17A.12. IID has adopted rules for delivery of notice to an individual. Rule 191–3.5 provides that service of a notice of hearing and statement of charges shall be made by personal service or by certified mail, return receipt requested, at least 15 days before the hearing date. Further, subrule 3.5(c) also provides that for “persons regulated by the [Division]” . . . “who have consented in writing to have the commissioner accept service of process on their behalf” delivery of the notice of hearing is accomplished when the commissioner signs the notice of hearing or statement of charges.

Upon receipt of the notice of hearing, the individual against whom the charges are brought has “20 days of service of the notice of hearing unless otherwise ordered” to file an answer. 191 I.A.C. § 3.5(3). “Any allegation in the notice of hearing or accompanying charging document not denied in the answer is considered admitted” with the Tribunal authorized to “refuse to consider any defense not raised in the answer which could have been raised on the basis of facts known when the answer was filed if any party would be prejudiced.” Id.

If an individual against whom charges are brought fails to file an answer as required by rule or otherwise participate, IID may move for a default order. See id. § 3.22. More specifically, the governing IID Rule states: “If a party fails to appear or participate in a contested case proceeding after proper service of notice . . . , the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.” Id. § 3.22(1). Failing to file a required pleading, such as an answer, is expressly identified as a form of lack of participation sufficient to justify a default, with another Rule stating: “Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and failed to file a required pleading or has failed to appear after proper service.” Id. § 3.22(2).

Importantly, “[a] default decision may award any relief consistent with the request for relief made in the petition, notice of hearing, or charging document and embraced in its issues.” *Id.* 3.22(9). Of note, the repeated use of the permissive term “may” in the Rule (as opposed to a mandatory term such as “shall”) confers significant discretion in whether to issue a default decision and the nature of any sanction. *See, e.g., Burton v. Univ. of Iowa Hosps. & Clinics*, 566 N.W.2d 182, 187 (Iowa 1997) (“Generally, the word ‘may,’ when used in a statute, is permissive only and operates to confer discretion unless the contrary is clearly indicated by the context.”).

B.

In this case, IID’s Motion for Default should be granted on the terms requested in the Motion. As an initial matter, the Tribunal has the authority to grant a default decision in this case. First, the record demonstrates Smithey was properly served the Statement of Charges and Notice of Hearing, thereby triggering the duty to file an answer within 20 days. The certified mail was successfully delivered to Smithey’s address of record as provided to the Division on her licensing record. *See* 191 I.A.C. § 3.5(1)(b). Second, the record also demonstrates Smithey failed to timely file an answer, which is a required pleading. These two facts give the Tribunal the authority under IID Rule 3.22 to grant the Motion, thereby leaving the issues of whether such should be granted and on what terms.

Based on the totality of the circumstances, the Tribunal should grant the Motion. No doubt exists that Smithey has been made aware of this matter, as not only did IID attempt to contact her during the investigation as evidenced by the unrebutted claims in the Statement of Charges, but it also mailed and emailed the relevant documents to the address Smithey has listed. IID provided documentation that Smithey has been made aware of the charges but appears to have made a choice to not participate. Moreover, nothing in the record suggests a hearing on the merits is needed to avoid an injustice. The public is served by prompt resolution of this matter.

The record also dictates granting IID’s Motion on the terms requested. IID is requesting that Smithey’s producer license be immediately revoked with a cease and desist order and prohibition on engaging in the business of insurance in Iowa; restitution in the amount of \$12,799.80; a civil penalty of \$5,000.00; and payment of the costs of investigation and prosecution in the amount of \$878.75. Given each of these requests is authorized by statute for the conduct articulated in the Statement of Charges and given the type of relief sought in the Motion is referenced in the Statement of Charges, such relief is “consistent with the request for relief made in the petition, notice of hearing, or charging document and embraced in its issues.” *Id.* § 3.22(9). Thus, authority exists to grant the Motion, and the totality of the circumstances indicates it should be granted. Accordingly, the Motion for Default is GRANTED.¹

¹ In deciding to accept the allegations in the Statement of Charges as true, this Tribunal relies on the fact that Rule 191–3.22(9) provides authority to award the relief asked for in a Statement of Charges. This implies that a tribunal may accept as true the unchallenged matters in the charging documents in determining the appropriate relief to be awarded.

ORDER

IT IS HEREBY ORDERED:

- A. Amber Marie Smithey, in failing to make a written answer to the Statement of Charges and participate in the contested case proceeding, is in default pursuant to Iowa Administrative Code rule 191—3.22 with the factual statements in the Statement of Charges being taken as true for purposes of this decision;
- B. Amber Marie Smithey's insurance producer license is immediately revoked pursuant to Iowa Code §§507B.7, 522B.11 and 522B.17;
- C. Amber Marie Smithey shall immediately cease and desist from engaging in the conduct charged in Counts I and II of the Statement of Charges and from engaging in the business of insurance in Iowa pursuant to Iowa Code §§ 522B.11 and 522B.17;
- D. Restitution in the amount of \$12,799.80 is assessed against Amber Marie Smithey, made payable to the State of Iowa, and to be distributed to the affected company;
- E. A civil penalty in the amount of \$5,000.00 is assessed against Amber Marie Smithey, made payable to the Iowa Insurance Division, to be credited to the Iowa Insurance Enforcement Fund, to provide funds for insurance enforcement and education pursuant to Iowa Code §§ 505.8 and 507B.7, assessed as follows.
- F. Costs of the investigation and prosecution of this matter are assessed against Amber Marie Smithey in the amount of \$878.75, made payable to the Iowa Insurance Division, to be credited to the Iowa Insurance Enforcement Fund, to provide funds for insurance enforcement and education pursuant to Iowa Code §§ 505.8 and 507B.7.

The Iowa Insurance Division shall take all necessary action in implement this decision.

Dated this 1st day of October, 2024.

cc: Amber Smithey, 4720 W. Davis St., Bremerton, WA 98312,
cybermaster3141592@gmail.com (By Mail and Email)
Zebulon Black, Attorney for IID; zebulon.black@iid.iowa.gov (By AEDMS)
Brooke Hohn, IID (By AEDMS)

Case Title: IN THE MATTER OF AMBER MARIE SMITHEY
Case Number: 25IID0001
Type: Order - Abandonment/Default

IT IS SO ORDERED.

A handwritten signature in cursive script, reading "J. Sarajlija". The signature is written in black ink and is positioned above a horizontal line.

Jasmina Sarajlija, Administrative Law Judge