

BEFORE THE IOWA INSURANCE COMMISSIONER

<p>IN THE MATTER OF</p> <p>SCOTT A. DURSCHER, NPN 6868004, CRD 3049265, DOB 11/23/XXXX,</p> <p>Respondent.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Division Case No. 122719</p> <p>ORDER AND CONSENT TO ORDER</p>
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NOW THEREFORE, upon motion of the Iowa Insurance Division (“Division”) and by the consent of Respondent Scott A. Durscher, pursuant to the provisions of Iowa Code chapter 522B—Licensing of Insurance Producers, the Commissioner enters the following Order and Consent to Order (“Consent Order”):

I. PARTIES AND JURISDICTION

1. The Commissioner of Insurance, Douglas M. Ommen, directly and through his designees, administers and enforces Iowa Code chapter 522B—Licensing of Insurance Producers pursuant to Iowa Code § 505.8.
2. Scott A. Durscher (“Durscher”) is an individual with a last-known residence address of 1002 12th Ave. NW, Waverly, Iowa 50677.
3. Durscher is and has been licensed in the state of Iowa as a resident insurance producer since May 9, 1997. Durscher is licensed under National Producer Number 6868004.
4. At all relevant times hereto, Durscher was registered by Financial Industry Regulatory Authority, INC. (“FINRA”) under Central Registration Depository (“CRD”) number 3049265 in Iowa as a broker-dealer agent and investment advisor.
5. Pursuant to Iowa Code § 505.28, Durscher consented to the jurisdiction of the Commissioner of Insurance by committing acts governed by Iowa Code chapter 522B.

6. From on or about May 2, 2023, to November 1, 2023, Durscher engaged in acts and practices within the state of Iowa constituting cause for probation, suspension, or revocation of Durscher's insurance producer license; cease and desist orders; restitution; and civil penalties or other relief under Iowa Code chapters 505 and 522B, and rules adopted pursuant to these chapters.

II. FINDINGS OF FACT

7. Durscher applied for a resident 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, Durscher designated the Commissioner as an agent for service of process.

8. The Division issued Durscher a license as a resident insurance producer on May 9, 1997, and assigned to Durscher National Producer Number 6868004.

9. At all relevant times hereto, Durscher was registered by FINRA under CRD number 3049265 in Iowa as a broker-dealer agent and investment advisor.

10. Durscher is an investment adviser representative and Partner with Accel Wealth Management ("Accel"), a financial services firm with an office located in Waverly, Iowa.

11. J.R. is an Iowa consumer and has been a customer of Accel and Durscher for at least twenty-five years.

12. On December 28, 1993, J.R. purchased an individual flexible premium adjustable life insurance policy (the "Policy") from Jackson National Life Insurance Company ("Jackson"). The Policy included a continuation benefit that provided increasing financial bonuses to J.R. the longer he held the Policy. Specifically, J.R. would receive financial bonuses after 12, 16, 20, and

30 years. To receive the bonus, the Policy must still be held by the policyholder on the Policy's anniversary date of each relevant year. The anniversary date for J.R.'s Policy was December 28.

13. On February 13, 2018, Durscher submitted to Jackson a change of servicing producer/representative form, naming Durscher and Accel as J.R.'s representatives.

14. From at least February 13, 2018, through May 2, 2023, Durscher and J.R. periodically discussed the Policy and when to proceed with the surrender and transfer to a long-term health care policy. During that time, Durscher approached J.R. and proposed that J.R. surrender the value of the Policy when he was sixty-four and reinvest the surrender value in a long-term health care policy, as the Policy would lose value the longer it remained in place beyond J.R.'s sixty-fourth birthday. Prior to Durscher making this recommendation, J.R. had not expressed an interest in surrendering the Policy but agreed with Durscher's recommendation.

15. On May 2, 2023, Durscher contacted Jackson requesting a policy illustration ("Illustration") on J.R.'s Policy. On May 5, 2023, Jackson provided the Illustration to Durscher.

16. The Policy Illustration provides projections of the future value of the policy broken into two groups of columns: guaranteed value calculations and nonguaranteed value calculations. The illustration states that at the end of year 30, J.R. would receive a guaranteed surrender value of \$30,942.00 and a nonguaranteed surrender value of \$113,080.00. The second page of the illustration further explains the values shown, stating:

Nonguaranteed benefits and values shown are not guaranteed by the insurance contract. Nonguaranteed benefits and values are subject to change by the insurer.

...

If this illustration shows that the policy is expected to be in force on a guaranteed basis on the last day of the 12th, 16th, and 20th policy years, the projected guaranteed values have been increased to include the Policy Continuation Benefit. For additional information regarding this benefit, please consult your policy.

If this illustration shows that the policy is expected to be in force on a guaranteed basis **on the last day** of the 12th, 16th, 20th and 30th policy years, **the projected nonguaranteed values have been increased to include the Policy Continuation Benefit.**

(emphasis added).

17. After both J.R. and Durscher reviewed the illustration, Durscher told J.R. that the surrender value of the Policy was \$113,080.00 and that it would be a good time to initiate the surrender and reinvestment, even though the Policy had not yet reached its thirty-year anniversary date.

18. On July 25, 2023, Durscher, acting as J.R.'s agent and on J.R.'s behalf, submitted an application for an individual bridge index annuity policy with EquiTrust Life Insurance Company ("EquiTrust").

19. On August 22, 2023, J.R., relying on Durscher's advice and expertise, submitted a transfer/1035 exchange form to Jackson requesting that the full value of the Policy be transferred to EquiTrust. The transfer form requested that the transfer occur "immediately" and included an instruction to Jackson that "Upon receipt, [Jackson] is directed to **surrender all . . . of my contract . . . and apply the value to the product for which I have submitted an application. I understand that by executing this assignment, I irrevocably waive all rights, claims and demand under the above contract.**" (emphasis added).

20. On September 21, 2023, Jackson sent J.R. a letter relating to J.R.'s request to surrender the Policy. In the letter, Jackson asked, "Have you taken the time to evaluate your current policy and its benefits?" and advised J.R. to fully review the terms of his Policy prior to proceeding with the exchange. The letter further stated that "The release of policy values may affect the guaranteed elements, non-guaranteed elements, face amount or surrender value of the policy

from which the policy values are released.” The letter did not include the surrender value for the Policy.

21. On October 6, 2023, Jackson processed the exchange and cancelled J.R.’s Policy and sent the accrued surrender value of \$31,533.21 to Equitrust—\$81,546.79 less than the \$113,080.00 J.R. expected to be transferred. The full continuation benefit would have accrued on December 28, 2023.

22. Between August 25 and October 6, 2023, Durscher or a staff account manager with Accel acting under Durscher’s direction contacted Jackson by phone on at least five occasions to inquire about the status of the surrender and transfer. At no point during these calls did Durscher or the manager confirm or inquire about the anticipated surrender value of the Policy.

23. The Equitrust bridge policy to which the Jackson Policy’s surrender value was transferred had a minimum premium payment of \$50,000.00. Because the surrender value of the Jackson Policy was less than the required minimum premium, J.R. paid \$18,466.79 from his personal savings to finance the new premium.

24. The loss of the expected policy continuation benefit on the Jackson Policy combined with the out-of-pocket expenses incurred by J.R. in paying the premium for the Equitrust Policy resulted in a loss to J.R. of \$100,013.58.

25. Over the next three months, J.R. personally contacted Jackson requesting that it reverse the transaction based on J.R.’s misunderstanding of the accrual date of the continuation benefit and his reliance on Durscher’s advice. Jackson refused to reverse the surrender of the policy and honor J.R.’s near thirty-year commitment as a customer of Jackson.

26. In response to an inquiry from the Division, Durscher stated that the Illustration he reviewed relating to J.R.’s Policy “did not mention anything about the Policy Continuation

Benefit,” and that he was “not told of the continuation rider and [was] under the assumption that the cash value was \$113,000.” Durscher stated that this understanding was based on the Illustration’s indication that the higher surrender value would be available to J.R. once he was age 64, when the higher value was actually available only if the Policy was in place at the end of year 30. Durscher did not review the underlying Policy to confirm when the surrender value triggered, and instead advised J.R. based on the first page of the Illustration alone.

27. In the interest of moving forward with the Commissioner of Insurance and obtaining resolution for the primary interests of J.R., but also for himself, Durscher is voluntarily relinquishing his right to challenge and/or add facts to this Order and Consent to Order that may shed greater light on the circumstances. Durscher undertakes this position for the sake of cooperation and efficient completion of the Division’s investigation.

III. CONCLUSIONS OF LAW

COUNT I

Demonstrating Incompetence, Untrustworthiness, or Financial Irresponsibility

28. 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 demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business.

29. Durscher demonstrated incompetence, untrustworthiness, or financial irresponsibility when he misinterpreted the surrender value of the Policy and failed to understand the illustration and Policy terms provided by Jackson.

30. Durscher demonstrated incompetence, untrustworthiness, or financial irresponsibility when, based on his misunderstanding of the Policy, Durscher advised J.R. to surrender the Policy and assured J.R. of the \$113,080.00 surrender value without confirming that value with Jackson.

31. Durscher demonstrated incompetence, untrustworthiness, or financial irresponsibility when he failed to exercise due diligence in reviewing the Policy and underlying contract and accompanying terms in determining whether the surrender and transfer were in J.R.'s best financial interests, which resulted in a loss to J.R. of \$100,013.58.

32. Durscher's acts and practices violated Iowa Code § 522B.11(1)(h) subjecting Durscher to probation, suspension, or revocation of Durscher's insurance producer license, the imposition of a civil penalty, an order requiring Durscher 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.

IV. ORDER

WHEREFORE, IT IS ORDERED pursuant to the powers granted to the Commissioner of Insurance by Iowa Code chapter 522B:

- A. Durscher shall, contemporaneously with this Consent Order, pay a restitution in the amount of \$81,546.79, made payable to the Iowa Insurance Division, to be credited to affected consumers pursuant to Iowa Code § 505.8;
- B. Durscher's Iowa insurance producer license is placed on probation for a period of six (6) months commencing on the date of this Consent Order pursuant to Iowa Code § 522B.11 and is subject to the completion of the following terms:
 - a. Durscher shall, within sixty (60) days of this Consent Order, complete six (6) hours of continuing education relating to life insurance and annuity transactions, including replacements. These hours shall be in addition to any other continuing education requirements Durscher is required to complete to

maintain his Iowa insurance producer license. Durscher shall submit proof of compliance with this subparagraph C.a. to the Division within sixty (60) days of this Consent Order.

- b. Durscher shall be supervised by a colleague of equal or superior authority also employed by Durscher's employer ("Supervisor"), as identified in Attachment A attached hereto. Such Supervisor shall also hold an insurance producer license in good standing with the Division. The Supervisor shall review Durscher's business relating to life insurance policies and annuity contracts, including replacements, no less than twice per month and complete a supervision form as provided by the Division each month, as identified in Attachment B attached hereto. Durscher shall ensure such form is submitted to the Division by the first day of each month during the probation period.
- c. If, prior to the end of Durscher's probation, Durscher's Supervisor is unable or unwilling to supervise him, Durscher and his Supervisor shall notify the Division within seven (7) days. Durscher must provide the name and agreement of another Supervisor willing and able to supervise Durscher. Durscher may not make any recommendations or be the agent of record on any insurance policies until such time as a replacement Supervisor is obtained.
- d. All correspondence, notices, and reporting required by Paragraph C of this Consent Order shall be submitted in writing to the Division by email IID.marketregulation@iid.iowa.gov or by mail to Iowa Insurance Division, ATTN: Market Regulation, 1963 Bell Ave., Ste. 100, Des Moines, Iowa 50315.

C. These orders may be enforced under Iowa Code chapters 522B, including but not limited to Iowa Code § 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 amounts.

SO ORDERED on this 26th day of November, 2024.



DOUGLAS M. OMMEN
Iowa Insurance Commissioner

Respectfully submitted,



Joseph A. Fraioli
Iowa Insurance Division
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(515) 654-6562
Joseph.fraioli@iid.iowa.gov
ATTORNEY FOR THE DIVISION

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C: 515-306-9459 |
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ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause, or their attorney, at their respective addresses disclosed on the pleadings on November 26, 2024.

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

Signature: Brooke Hohn
Brooke Hohn

NOTICE OF PENALTIES FOR WILLFUL VIOLATION OF THIS ORDER

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

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

NOTICE OF FINAL ORDER IMPACT

A final order of license suspension, probation, 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.

CONSENT TO ORDER AND AGREEMENT

I, Scott A. Durscher, Respondent in this matter, have read, understood, and do knowingly consent to this Order in its entirety. I understand and acknowledge I have the right to consult with an attorney on this matter if I choose to do so and acknowledge that the Division cannot provide me an attorney nor can the Division provide me legal advice. By executing this Consent, I understand that I am waiving my rights to a hearing, to confront and cross-examine witnesses, to produce evidence, and to judicial review.

I further understand this Order is considered a final administrative action that will be reported by the Division to the National Association of Insurance Commissioners and to other regulatory agencies. I also understand this Order is a public record under Iowa Code chapter 22 and information may be shared with other regulatory authorities or governmental agencies, pursuant to Iowa Code § 505.8(8)(d). I also understand this Order will be posted to the Division's website and a notation will be made to the publicly available website record that administrative action has been taken against me.

Scott A. Durscher
Scott A. Durscher, Respondent

11/19/2024
Date

1002 12th A. NW WAVERLY IA 50677
Address of Signatory

Subscribed and sworn before me by SCOTT DURSCHER
Lori O'Hare on this 19 day of NOVEMBER, 2024.



Lori O'Hare
Notary Public for the State of Iowa

SUPERVISION AGREEMENT

I, Stacie Brass, a resident licensed insurance producer in the state of Iowa, NPN 6845414, have read and understood the Order and Consent to Order (“Consent Order”) entered into between Scott Durscher (“Durscher”) and the Iowa Insurance Division (“Division”). I voluntarily enter into this Supervision Agreement (“Agreement”) with the Division.

TERMS

I hereby agree to directly supervise the business activities of Durscher relating to life insurance and annuity transactions so long as he is employed by Accel Wealth Management. I understand that Durscher requires supervision for the entire period of his probation with the Division as provided in the Consent Order. This supervision will include the following terms:

1. I agree to meet with Durscher at least once every two weeks during his probation to review any recommendation by Durscher, for which he is or will be the agent of record, to purchase, surrender, or replace a life insurance policy or annuity contract.
2. Prior to the first of each month of Durscher’s probation, I agree to complete a report detailing my review of Durscher’s business as described in Paragraph 1 on a form provided by the Division and give the completed report to Durscher.
3. I agree to respond to inquiries by the Division regarding Durscher’s performance during his probation.
4. I agree to notify the Division immediately after I obtain knowledge that Durscher has failed to comply with the terms of the Consent Agreement or violated any Iowa insurance law or regulation.
5. I agree to notify the Division immediately if Durscher ceases employment with Accel Wealth Management during his period of probation.
6. I agree to notify the Division within seven (7) days if I am unable to continue to supervise Durscher as required by the Consent Order.

ACKNOWLEDGEMENT

I understand that my failure to directly supervise Durscher or comply with this Supervision Agreement may result in my disqualification from further serving as Durscher's supervisor and immediate termination of this agreement.

Stacie Brass
Stacie Brass

11/19/2024
Date

3633 N. Union Rd Cedar Falls IA 50613
Address of Signatory

Subscribed and sworn before me by STACIE BRASS
~~Stacie Brass~~
Lori O'Hare on this 19 day of NOVEMBER, 2024.



Lori O'Hare
Notary Public for the State of Iowa

FOR THE IOWA INSURANCE DIVISION

Joseph Fraioli
Joseph Fraioli, Enforcement Attorney

11/21/2024
Date