

BEFORE THE IOWA INSURANCE COMMISSIONER

IN THE MATTER OF)	Division Case No. 89089
)	
CHRISTOPHER J. TIERNAN,)	
NPN 8656612,)	DEFAULT ORDER
CRD 5095130,)	
Respondent)	

The hearing officer has taken up for consideration the Division’s Motion for Default Order and Motion for Discovery Sanctions, both filed by the attorney representing the Iowa Insurance Division, Ms. Tracy Swalwell. Since the ruling on the Motion for Default Order is dispositive, the Motion for Discovery Sanctions will not be specifically ruled upon.

NOW THEREFORE, Kim Cross, Assistant Chief Examiner and designated presiding officer, being fully informed of the matter, issues the following findings of facts, conclusions of law, and order of revocation, cease and desist, restitution, civil penalty, and costs:

PARTIES AND JURISDICTION

1. The Commissioner of Insurance, Nick Gerhart, administers the Iowa Insurance Trade Practices Act—Iowa Code Chapter 507B, the Iowa Licensing of Insurance Producers Act—Iowa Code Chapter 522B, and the Uniform Securities Act—Iowa Code Chapter 502 pursuant to Iowa Code §§ 505.8 and 502.601. Commissioner Gerhart has designated the Iowa Insurance Division to seek enforcement of these provisions.
2. Christopher J. Tiernan, (“Respondent”), is an individual with a last-known residence address of 1507 W. Olive Street, Marshalltown, IA 50158.
3. Respondent is an individual with the birth month and date of June 27.
4. Respondent is and has been licensed in the state of Iowa as a resident insurance producer since November 29, 2005. He is licensed under National Producer Number 8656612.

5. Respondent was licensed in the state of Iowa as a registered securities agent from May 21, 2008 until December 31, 2015. He was licensed under Individual CRD No. 5095130.

FINDINGS OF FACT

6. Respondent applied for a resident insurance producer license with the Division by submitting through the National Insurance Producer Registry a Uniform Application for Individual Producer License (“Uniform Application”) on November 29, 2005. In submitting the Uniform Application, Respondent designated the Commissioner as an agent for service of process.

7. The Division issued Respondent a license as an insurance producer on November 29, 2005 and assigned to him National Producer License number 8656612.

8. Respondent registered as a securities agent by submitting through the Web Central Registration Depository (“Web CRD”) a Uniform Application for Securities Industry Registration or Transfer (“Form U4”) on February 1, 2006.

9. The Division registered Respondent as a securities agent in the state of Iowa on July 27, 2006 and was assigned Individual CRD No. 5095130.

10. Respondent’s registration as a securities agent was terminated on July 27, 2006.

11. Respondent registered as a securities agent by submitting through the Web CRD a Form U4 on May 5, 2008. In submitting Form U4, Respondent designated the Commissioner as an agent for service of process.

12. The Division registered Respondent as a securities agent in the state of Iowa on May 21, 2008 under the previously issued Individual CRD No. 5095130. This registration was terminated on December 31, 2015.

13. Respondent is an appointed insurance producer with Farmers Insurance and was a registered securities agent with Farmers Financial Solutions, LLC.
14. Respondent holds a small business checking account with United Bank & Trust ("Checking Account") which he uses for personal and business items.
15. From about January 2014 to the present date, Respondent has deposited checks for premiums from clients, including Farmers Insurance clients, into the Checking Account.
16. From about January 2014 to the present date, Respondent has made numerous transfers from the Checking Account to three personal accounts and has made numerous cash withdrawals from the Checking Account.
17. From about January 2014 to the present date, Respondent has failed to remit to the proper companies the premiums amounts the clients paid by check.
18. From about January 2014 to the present date, Respondent has accepted monies from clients for payment of insurance premiums but has neglected to procure insurance.
19. From about January 2014 to the present date, Respondent has created documents to indicate clients had insurance coverage through certain companies when the client did not.
20. From about January 2014 to the present date, Respondent has misrepresented the amount of premium due causing clients to overpay and has retained the additional funds.
21. From about January 2014 to the present date, Respondent has led clients to believe they have insurance coverage through certain companies when the clients do not.
22. The Division filed a Statement of Charges on December 2, 2015 alleging violations of law and grounds for license discipline under Iowa Code, Chapters 507B, 522B, and 502.
23. Respondent filed an answer to the charges on December 22, 2015.

24. The Division filed its Motion for Leave to Amend Statement of Charges on February 26, 2016 due to facts which were not within the Division's knowledge until after speaking with clients of Respondent in late January 2016.
25. The Commissioner granted Division's Motion for Leave to Amend Statement of Charges in an Order signed and filed on March 9, 2016.
26. The Commissioner's March 9, 2016 order stated Respondent shall file his answer to the charges on or before March 30, 2016 pursuant to Iowa Administrative Code r. 191—3.5.
27. The Division filed its Amended Statement of Charges and pursuant to Respondent's consent to service of process, the Amended Statement of Charges was served on the Commissioner on March 10, 2016.
28. The Amended Statement of Charges and March 9, 2016 order were mailed together by restricted certified mail to Respondent's last known address provided by Respondent in his licensing record. The return of service indicated a delivery date of March 12, 2016.
29. At the pre-hearing conference held on March 15, 2016, Respondent acknowledged he received the Amended Statement of Charges.
30. Respondent has not filed an Answer to the Amended Statement of Charges as required pursuant to Iowa Administrative Code r. 191—3.5(3) and the March 9, 2016 order, nor has Respondent filed any other responsive pleading to the Amended Statement of Charges.
31. On March 31, 2016, the Division filed a Motion for Default Order and mailed this motion to Respondent's address of record.
32. Respondent has not filed any responsive pleading to the Motion for Default Order.

CONCLUSIONS OF LAW

33. A motion may be considered unresisted if no response is timely filed. 191 IAC 3.5(3). Respondent has not filed a timely written response to the Division's motion for default order. The motion is unresisted.

34. A party to a contested case action may move for default against a party when the party fails to file a required pleading or has failed to appear after proper service. 191 IAC 3.22(2). Respondent has not filed an answer to the Amended Statement of Charges and has not resisted the Division's motion for default.

35. Under Respondent's consent to service of process and his acceptance of the Amended Statement of Charges by restricted certified mail, Respondent was properly served as required by Iowa Administrative Code r. 191—3.5(1).

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

Count I **Converting or Misappropriating Funds**

37. Respondent converted or misappropriated his clients' funds by depositing checks for premiums into the Checking Account and not remitting proper payment to the companies.

38. Respondent's acts and practices are in violation of Iowa Code § 522B.11(d) subjecting Respondent to revocation or suspension of Respondent's insurance producer license, the imposition of a civil penalty, and an order requiring Respondent to cease and desist from engaging in the acts or practices alleged herein pursuant to Iowa Code §§ 522B.11 and 522B.17.

Count II **Demonstrating Financial Irresponsibility**

39. Respondent demonstrated financial irresponsibility in the conduct of business by depositing checks for premiums into the Checking Account, not remitting proper payment to the

insurance company, making numerous transfers to personal accounts, and withdrawing large sums of cash.

40. Respondent's acts and practices are in violation of Iowa Code § 522B.11(h) subjecting Respondent to revocation or suspension of Respondent's insurance producer license, the imposition of a civil penalty, and an order requiring Respondent to cease and desist from engaging or participating in the business of insurance pursuant to Iowa Code §§ 522B.11 and 522B.17.

Count III
Dishonest or Unethical Practices in Insurance Business

41. Respondent engaged in dishonest or unethical practices in the insurance business by depositing checks for premium payments into the Checking Account and not remitting proper payment to the insurance company.

42. Respondent's acts and practice are in violation of Iowa Code § 502.412(4)(m) subjecting Respondent to revocation, suspension, censure, or bar of his securities agent registration and the imposition of civil penalties pursuant to Iowa Code § 502.412(3).

Count IV
**Misrepresentation for Purpose of Inducing
Purchase of Insurance Policy**

43. Respondent misrepresented the amount of premium due in order to induce or tend to induce clients to purchase insurance policies.

44. Respondent's acts and practices are in violation of Iowa Code § 507B.4(3)(a)(10) subjecting Respondent to an order to cease and desist from engaging in such practices, imposition of a civil penalty, or suspension or revocation of Respondent's insurance producer license pursuant to Iowa Code § 507B.7.

Count V
**Intentionally Misrepresenting the Terms
of an Actual or Proposed Insurance Contract**

45. Respondent intentionally misrepresented the terms of an actual or proposed insurance contract by creating documents indicating coverage through a particular company when no policy as represented existed.

46. Respondents acts and practices are in violation of § 522B.11(e) subjecting Respondent to revocation or suspension of Respondent's insurance producer license, the imposition of a civil penalty, and an order requiring Respondent to cease and desist from engaging or participating in the business of insurance pursuant to Iowa Code §§ 522B.11 and 522B.17.

47. The hearing procedure was governed by Iowa Code §§ 17A.12, Iowa Code Chapters 502, 507B, and 522B, and Iowa Administrative Code Chapter 3.

ORDER

IT IS HEREBY ORDERED that Christopher J. Tiernan is in default pursuant to Iowa Administrative Code r. 191—3.22.

IT IS FURTHER ORDERED that an order of revocation is entered against Christopher J. Tiernan's and his Iowa resident insurance producer license shall be revoked on May 2, 2016 pursuant to Iowa Code §§ 507B.7 and 522B.11.

IT IS FURTHER ORDERED that Christopher J. Tiernan shall cease and desist from engaging in any of the acts, methods, or practices determined as violations herein pursuant to Iowa Code §§ 507B.7 and 522B.11.

IT IS FURTHER ORDERED that Christopher J. Tiernan is permanently prohibited from transacting any insurance business in this state or from selling, soliciting, or negotiating insurance; managing, supervising, compensating, hiring, employing, approving or evaluating any persons required to be licensed insurance producers in this state; or providing any other insurance services to, receiving any compensation, fee or remuneration for any such insurance services from, or being employed by any person or entity engage in the business of insurance in this state, effective May 2, 2016 and pursuant to Iowa Code § 505.8(10).

IT IS FURTHER ORDERED that Christopher J. Tiernan is permanently barred from applying for a securities agent registration in this state; offering or selling, or effecting the offer or sale of any securities in this state; receiving any compensation, fee or remuneration for the offer or sale of any securities in this state; or being employed by any person or entity engaged in the offer or sale of securities in this state; as of the date of this Order pursuant to Iowa Code §§ 505.8(10), 502.409, and 502.412.

IT IS FURTHER ORDERED that Christopher J. Tiernan shall pay to the State of Iowa, Insurance Division restitution in the amount of \$9,965.14 for premium accepted by Respondent but not remitted to the proper company pursuant to Iowa Code § 505.8.

IT IS FURTHER ORDERED that Christopher J. Tiernan shall pay to the State of Iowa, Insurance Division a civil penalty in the amount of \$5,200 pursuant to Iowa Code §§ 507B.7, 522B.11, and 502.412.

IT IS FURTHER ORDERED that Christopher J. Tiernan shall pay to the State of Iowa, Insurance Division costs of investigation and prosecution in the amount of \$3,025.00 pursuant to Iowa Code §§ 505.8 and 502.604.

SO ORDERED on this 14th day of April, 2016.

NICK GERHART
Commissioner of Insurance



Kim Cross
Assistant Chief Examiner and
Designated Presiding Officer

Copies of this order shall be sent by both certified and first class mail to:

Christopher Tiernan
1507 W. Olive St.
Marshalltown, IA 50158

NOTICE OF FINAL ORDER

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

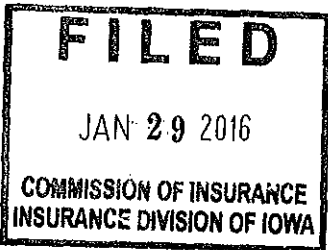
NOTICE OF PENALTIES FOR WILLFUL VIOLATION OF THIS ORDER

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

YOU ARE ALSO NOTIFIED that any person who violates this order 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 the person in an amount not less than three thousand dollars but not greater than ten thousand dollars for each violation, and may issue further orders as it deems appropriate.

NOTICE REGARDING IMPACT OF ORDER ON EXISTING LICENSES

A final order of license revocation or a cease and desist order may adversely affect other existing business or professional licenses and result in license revocation or disciplinary action.



BEFORE THE IOWA INSURANCE COMMISSIONER

IN THE MATTER OF)	Division Case No. 89089
)	
CHRISTOPHER J. TIERNAN,)	EMERGENCY ADJUDICATIVE
NPN 8656612,)	ORDER
CRD 5095130,)	
Respondent)	

A hearing was held in the above-captioned matter beginning on January 8, 2016 at 8:00 a.m. before Assistant Commissioner Kim Cross. The hearing was held at the offices of the Iowa Insurance Division, Two Ruan Center, 601 Locust St., 4th Floor, Des Moines. The purpose of the hearing was hear arguments on the Iowa Insurance Division’s Motion for Emergency Adjudicative Proceeding. The Respondent was not present and represented by counsel Corey Bird. The Iowa Insurance Division was represented by Enforcement Attorney Tracy Swalwell.

I. PARTIES AND JURISDICTION

1. The Commissioner of Insurance, Nick Gerhart, administers the Iowa Insurance Trade Practices Act—Iowa Code Chapter 507B. The Division has the authority to issue emergency adjudicative orders pursuant to Iowa Administrative Code § 191–3.31. Commissioner Gerhart has designated the Iowa Insurance Division to seek enforcement of these provisions.
2. Christopher J. Tiernan, (“Respondent”), is an individual with a last-known residence address of 1507 W. Olive Street, Marshalltown, IA 50158.
3. Respondent is and has been licensed in the state of Iowa as a resident insurance producer since November 29, 2005. He is licensed under National Producer Number 8656612.
4. Respondent operates Tiernan Insurance Agency, LLC in Marshalltown, Iowa.
5. A hearing on the Statement of Charges is currently set for February 16, 2016 at 9:00 a.m.

II. FINDINGS OF FACT

6. The Division filed a Statement of Charges against Respondent on December 12, 2015.
7. Respondent filed his Answer to the Statement of Charges on December 22, 2015.
8. Based upon the specific facts listed in the Motion concerning K.G. and M.B, Respondent has had clients, known and unknown, write checks for large amounts of money for insurance and has deposited these checks into his own account.
9. Based upon the specific facts listed in the Motion concerning K.G. and M.B, Respondent has had clients, known and unknown, Respondent neglected to obtain the requested insurance coverage.
10. Respondent has led clients to believe they have insurance coverage by his statements and his creation of documents indicating coverage when in fact they do not.
11. Since filing his Answer, Respondent has continued to deceive his clients in regards to their current insurance coverage and status of their account with Tiernan Insurance LLC.
12. Respondent's clients, known and unknown, were unknowingly using vehicles and operating businesses without insurance and Respondent's other clients could be in the same situation.
13. The Division has conducted a sufficient factual investigation and found specific circumstances which pose an immediate danger to the public health, safety or welfare which are continuing. The requested action is limited in scope to avoid immediate danger but also permit the Respondent to engage in other activities that do not pose an immediate danger.

III. CONCLUSIONS OF LAW

14. Respondent made a misrepresentation of an insurance application by indicating to K.G. and M.B. that they had the insurance coverage requested, by creating an "Evidence of Insurance" for K.G. which contained false information regarding the insurance company and policy information, and creating a Premium Finance agreement for a policy for an insurance company which did not have a current policy.

15. Respondent made a misrepresentation of an insurance policy by intentionally misquoting a premium rate for M.B. for the purpose of inducing or tending to induce the purchase of an insurance policy in violation of Iowa Code § 507B.4(3)(a)(10).

16. Respondent is deceiving clients, known and unknown, by indicating the clients have the insurance coverage they wrote checks for when Respondent has in fact depositing the checks into his own account and not secured the requested insurance coverage.

17. Respondent's acts and practices are in violation of Iowa Insurance Trade Practices Act— Iowa Code Chapter 507B.

18. Iowa Administrative Code § 191—3.31 permits the Division to issue an emergency adjudicative order to prevent or avoid immediate danger to the public health, safety, or welfare.

IV. POLICY REASONS

19. It is contrary to the public interest and safety for insurance agents to indicate to clients they have insurance coverage when they in fact do not.

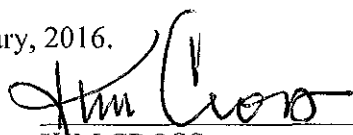
20. It is in the public interest and safety to require Respondent to account for the monies he receives and to provide proof that the monies received are being directed to the appropriate company to ensure consumers have the coverage they believe they have.

V. ORDER

WHEREFORE, IT IS ORDERED pursuant to the powers granted the Commissioner of Insurance by Iowa Code Chapters 507B and Iowa Administrative Code § 191-3.31:

- A. Respondent shall not accept from any insurance client, prospective insurance client or existing policyholder any checks written to Respondent or his business;
- B. Respondent shall require clients to write checks to the appropriate insurance company from whom coverage has been sought;
- C. Respondent shall not deposit any client monies into his business checking account or any other of his personal accounts;
- D. Respondent shall provide documentation from the insurance company of the client's policy number to each new client and any existing client requesting documentation; and
- E. Respondent shall provide to the Division on a weekly basis, an accounting of all monies received from clients and documentation demonstrating insurance has been bound or is in force for the client.

SO ORDERED on this ^{sh} 29 day of January, 2016.



KIM CROSS
Assistant Commissioner

IT IS ORDERED that I have reviewed the record in this matter and adopt these findings of fact, conclusions of law, and policy reasons and order as my own.

Dated this 29 day of January, 2016.



NICK GERHART
Iowa Insurance Commissioner

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