



BEFORE THE IOWA INSURANCE COMMISSIONER

<p>IN THE MATTER OF</p> <p>SHARI MILLER, NPN 18502732 DOB 10/17/XXXX</p> <p>Respondent.</p>	<p>Division Case No. 119236</p> <p>FINAL ORDER</p>
---	---

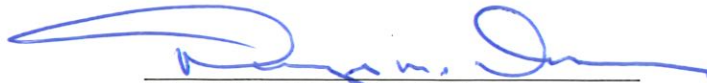
NOW THEREFORE, the Commissioner takes up for consideration the attached Proposed Default Order of Administrative Law Judge, Amber DeSmet, of the Iowa Department of Inspections and Appeals show as filed on July 18, 2024.

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

IT IS FURTHER ORDERED that Shari Miller has 30-days from the date of this Order to pay civil penalties of \$1,000 and costs of the investigation and prosecution of this matter in the amount of \$1,720 to be credited to the Iowa Insurance Enforcement Fund.

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 29th day of August, 2024.


DOUGLAS M. OMMEN
Iowa Insurance Commissioner

Copy to:

Zebulon Black
Iowa Insurance Division
1963 Bell Avenue, Suite 100
Des Moines, IA 50315

_____(email)
ATTORNEY FOR THE DIVISION

Shari Miller
1140 OT Wallace Blvd
Moncks Corner, SC 29461
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 August 30, 2024.

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

Signature: Brooke Hohn
Brooke Hohn

IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
CENTRAL PANEL BUREAU

In the Matter of:

Shari Miller,
NPN 18502732

Respondent.

)
)
)
)
)
)
)

Case No. 24IID0014
IID Case No. 119236

PROPOSED DEFAULT DECISION

On May 6, 2024, the Iowa Insurance Division (Division) filed a Statement of Charges and Notice of Hearing against Shari Miller, a licensed nonresident insurance producer. The matter was scheduled for both a prehearing conference and an evidentiary hearing. The matter was transferred to the Department of Inspections, Appeals, and Licensing.

On June 18, 2024, the Division filed a Motion for Default Judgment, stating Miller failed to file an answer as required Iowa Administrative Code rule 191—3.5(3). The Division seeks a default order that revokes Miller’s insurance producer license and assesses various other penalties. Miller failed to file a timely resistance.

The matter proceeded to the scheduled prehearing conference on July 16, 2024. At the prehearing conference, Zebulon Black, Brooke Hohn, Johanna Nagel, and Kendall Anderson were present on behalf of the Division. Miller failed to appear. The Division requested a default decision.

FINDINGS OF FACT

A. Division’s Statement of Charges

The following unchallenged allegations made in the Statement of Charges are taken as true for purposes of this decision. On May 6, 2024, the Division filed a Statement of Charges alleging one count against Miller. More specifically, the Division alleged as follows:

- Count One alleges that Miller used fraudulent, coercive, or dishonest practices or demonstrated incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in violation of Iowa Code sections 522B.11(1)(h) and 522B.17 when she knowingly entered false information on an insurance application to obtain a discount for a consumer for which he was not eligible.

In the statement of charges, the Division then requested a sanction on Miller’s producer license (including revocation), a cease and desist order, a civil penalty, and payment of investigation and prosecution costs.

In support of the violation and requested relief, the Division alleged the following relevant factual allegations in its Statement of Charges:

2. Shari Miller (“Miller”) is an individual with a last-known residence address of 1140 OT Wallace Blvd., Moncks Corner, SC 29461.

....

7. Miller 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, Miller designated the Commissioner as an agent for service of process.

8. The Division issued Miller a license as a nonresident insurance producer on August 21, 2017. Miller was licensed under National Producer Number 18502732. Miller’s nonresident producer license expired on October 31, 2023.

9. On June 19, 2017, Miller was appointed by Mutual of Omaha (“Mutual”).

10. On June 12, 2023, P.T. contacted Mutual to receive a quote for a Medicare supplement plan because his divorce was finalized May 31, 2023, and he did not know if he wanted to opt in for COBRA coverage or elect his Medicare coverage. Miller spoke with P.T. and discussed P.T.’s health insurance needs. After their conversation, Miller provided P.T. a quote that included a household discount. Miller never asked P.T. any questions to confirm that he qualified for the household discount.

11. P.T. is a resident of Virginia. The state of Virginia allows a household discount to be applied to Medicare Supplement plans, and Mutual offers this discount. To qualify for this discount, the consumer must either reside with a spouse or civil union partner or reside with three adults ages sixty or older for the last twelve months.

12. On June 29, 2023, P.T. again spoke to Miller to process an application for his Medicare Part G coverage. When beginning the application, Miller asked P.T. who he is using to qualify for his household discount. P.T. expressed confusion about this question. Miller explained she thought that P.T. said previously that he was married and therefore qualified for a household discount. P.T. told Miller that he was not married and was getting the plan because his wife left him prior to receiving the initial quote. Miller confirmed that P.T. does not qualify for the household discount and stated to P.T. that she would remove the discount from the application which would adjust the premium. Miller removed the household discount from the application.

13. When P.T. asked about the new premium, Miller told him the new premium was higher than the premium she initially quoted him. Miller explained that the initial premium quote was only lower because she had incorrectly indicated that he was married during the quoting process. Upon being informed of the higher premium amount, P.T. told Miller that he decided to apply with Mutual only because the quoted premium was cheaper than the premium through “Anthem.”

14. In response, Miller stated that she was going back in the application, and not to tell anybody, because P.T. and his ex-wife had lived together. Miller asked for P.T.'s ex-wife's first and last name and date-of-birth. P.T. asked why this information was needed, and Miller said she was going to use the ex-wife for the discount because they lived together for 12 months.

15. Even though P.T. explained that he had not lived with his ex-wife since 2021, Miller's response was "Well let's just not say that and give you the discount." Miller also assured P.T. not to worry about the premium changing in the future because it was a lifetime discount.

16. On July 28, 2023, Mutual notified the Division of its decision to terminate Miller for cause on July 13, 2023, due to its determination that Miller intentionally made a misrepresentation on an insurance application in order to obtain a discount for consumer P.T.

B. Respondent's Default

On or around May 7, 2024, the Statement of Charges and Notice of Hearing was served via certified mail to Miller's address of record with the Division. The delivery attempt on May 13 was unsuccessful as there was no authorized recipient available. The postal service left Miller a notice to retrieve or schedule the delivery by May 27 or the mailing would be returned to the Division. The mail was returned to the Division. (Motion; Exhibits 1–2). On May 21, 2024, the Division sent the Statement of Charges and Notice of Hearing by first class mail to the address of record. This mailing was not returned to the Division. (Motion). The Division also emailed Miller a copy of the Statement of Charges and Notice of Hearing on May 21, 2024. The Division did not receive any indication the email was not successfully delivered. (Exhibit 3). Miller failed to file an answer within 20 days. (Motion).

On June 18, 2024, the Division filed a Motion for Default, arguing that Miller was in default due to her failure to file an answer. The Division requested a finding in its favor on the one count listed in the Statement of Charges. More specifically, the Division requested a default ruling, that all facts pled in the Statement of Charges be adopted, the revocation of Miller's insurance producer license, a cease and desist order, a civil penalty in the amount of \$1,000, and investigation and prosecution costs in the amount of \$1,720. (Motion).

Miller failed to respond to the Statement of Charges and Notice of Hearing as well as the Department's motion for a default order. Miller failed to appear for the prehearing conference.

CONCLUSIONS OF LAW

The Iowa legislature created the Division "to regulate and supervise the conducting of the business of insurance in the state."¹ One aspect of this authority is to regulate the licensing of insurance producers.² Another aspect of this authority is to monitor and respond to unfair,

¹ Iowa Code § 505.1.

² Iowa Code § 505.8; *see also* Iowa Code chapter 522B.

deceptive, or anti-competitive trade practices in the business of insurance.³ Pursuant to this statutory authority, the Division promulgated various administrative rules governing the licensing and conduct of those in the insurance business. For example, Chapter 10 of the Division's rules creates the specific rules governing the "qualification, licensure and appointment of insurance producers."⁴ Likewise, Chapter 15 of the Division's rules creates the "minimum standards and guidelines" for fair and honest practices in the insurance business.⁵

When the Division 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, the Division may file a statement of charges against the individual.⁶ This includes taking action against an individual's producer license.⁷ 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.⁸

Once the Division files a statement of charges against an individual and a notice of hearing is delivered concerning the charges, a contested case proceeding is commenced. The individual against whom the charges are brought has twenty days from the date of service of the notice of hearing to answer, unless otherwise ordered.⁹ "Any allegation in the notice of hearing or accompanying charging document not denied in the answer is considered admitted."¹⁰

If the party fails to file an answer or otherwise participate, the Division may move for a default order.¹¹ The presiding officer may enter a default decision when a party fails to appear or participate in a contested case proceeding after proper service.¹² 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.¹³

Importantly, a default decision may award relief authorized by statute or rule.¹⁴ The rule does not require an entry of default, but allows the presiding officer the discretion as to whether to issue a default decision and award any appropriate sanction.¹⁵

³ Iowa Code § 507B.3.

⁴ Iowa Administrative Code (IAC) 191—10.1.

⁵ IAC 191—15.1.

⁶ See, e.g., Iowa Code § 507B.6(1).

⁷ See Iowa Code § 522B.11(1).

⁸ Iowa Code § 505.8(10) (the Division "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."); see Iowa Code § 522B.11(1) (articulating license sanctions available for misconduct).

⁹ IAC 191—3.5(3).

¹⁰ IAC 191—3.5(3)(c).

¹¹ IAC 191—3.22(2).

¹² IAC 191—3.22(1).

¹³ IAC 191—3.22(2) (stating "[w]here 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.").

¹⁴ IAC 191—3.22(9).

¹⁵ 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.") (further citations omitted).

In this case, the Division's Motion for Default should be granted on the terms requested in the Motion. As an initial matter, the presiding officer has the authority to grant a default decision in this case. First, the record demonstrates Miller was properly served the Statement of Charges and Notice of Hearing, thereby triggering the duty to file an answer within 20 days. Although the certified mail was returned to the Division, the Statement of Charges and Notice of Hearing was mailed to the address of record that Miller was required to maintain with the Division. This is sufficient service under the Division's rules.¹⁶ An individual may not avoid an action by the Division by refusing to sign for mail or by failing to update that person's address.¹⁷ Second, the record also demonstrates Miller failed to timely file an answer, which is a required pleading. These two facts give the presiding officer the authority under the Division's rules to grant the motion for a default. The issue then is whether the motion should be granted and on what terms.

Based on the totality of the circumstances, the Division's motion should be granted. Miller has been made aware of this matter, but chose not to participate in the proceeding as she failed to file an answer and failed to appear for the status conference. Moreover, nothing about this apparent choice suggests something more is going on that warrants further efforts by the Division. In addition, nothing in the Division's conduct or the record suggests a hearing on the merits is needed to avoid an injustice, and the public is served by prompt resolution of this matter.

The allegations in the Statement of charges establish that Miller engaged in actions that are in violation of Iowa law. In reaching this conclusion, the presiding officer accepts the allegations in the Statement of Charges as true.¹⁸

The record dictates granting the Division's Motion for a Default on the terms requested. The Division requested that Miller producer licensee be immediately revoked with a prohibition on engaging in the business of insurance in Iowa and a civil penalty of \$1,000.00, and payment of the costs of investigation and prosecution in the amount of \$1,720. 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 authorized by statute or rule.¹⁹ Thus, authority exists to grant the Division's Motion, and the totality of the circumstances indicates it should be granted. This is because the un rebutted claim of fraudulent, coercive, or dishonest practices or demonstrated incompetence, untrustworthiness, or financial irresponsibility in the conduct of business demonstrates the requested sanction is proportionate. Accordingly, the Motion for Default is GRANTED.

ORDER

IT IS ORDERED:

¹⁶ See IAC 191—3.5(1)(b).

¹⁷ *Id.*

¹⁸ IAC 191—3.5(3) (providing that any allegation in the notice of hearing or charging document not denied in the answer is considered admitted); IAC 191—3.22(9) (granting authority to award any relief authorized by statute or rule).

¹⁹ IAC 191—3.22(9).

- A. Shari Miller, 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. Shari Miller’s insurance producer license is immediately revoked and Miller is prohibited from engaging in the business of insurance in Iowa pursuant to Iowa Code sections 507B.7, 522B.11, and 522B.17;
- C. Shari Miller shall immediately cease and desist from engaging in fraudulent coercive, or dishonest practices and demonstrating incompetence or untrustworthiness, and the business of insurance in Iowa pursuant to Iowa Code sections 522B.11 and 522B.17;
- D. A civil penalty in the amount of \$1,000 is assessed against Shari Miller, 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 sections 505.8 and 507B.7;
- E. Costs of the investigation and prosecution of this matter are assessed against Shari Miller in the amount of \$1,720, 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 sections 505.8 and 507B.7.
- F. Due to the default decision, the hearing scheduled for August 6, 2024, is cancelled.

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

cc: Zebulon Black and Brooke Hohn, Iowa Insurance Division (By AEDMS)
Shari Miller, 1140 OT Wallace Blvd., Moncks Corner, SC 29461, valleygirl062@aol.com
(By Email and Mail)

NOTICE

The proposed default decision constitutes a final decision unless one of the following occurs: (1) the presiding officer otherwise orders, (2) a motion to vacate the default decision is filed within 15 days after the date of notification or mailing of the decision in accordance with rule 191—3.12, or (3) an appeal to the commissioner of a proposed default decision is filed in accordance with rule 191—3.27. A motion to vacate must be filed and served on all parties and state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.²⁰

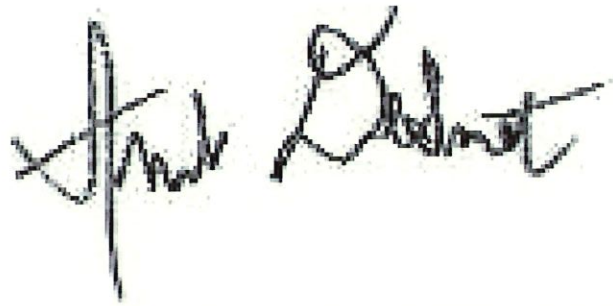
²⁰ IAC 191—3.22.

Case Title: IN THE MATTER OF SHARI MILLER

Case Number: 24IID0014

Type: Order

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "Amber DeSmet". The signature is written in a cursive style with a long vertical stroke on the left side.

Amber DeSmet, Administrative Law Judge