

FEB 02 2017

BEFORE THE DEPARTMENT OF INSURANCE
STATE OF NEBRASKA

FILED

STATE OF NEBRASKA)	
DEPARTMENT OF INSURANCE,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
PETITIONER,)	RECOMMENDED ORDER AND
)	ORDER
VS.)	
)	
DONNA EHLERS,)	CAUSE NO. I-95
)	
RESPONDENT.)	
)	

This matter came on for hearing on January 5, 2017, before Laura L. Arp, a hearing officer duly appointed by the Director of the Nebraska Department of Insurance. The Nebraska Department of Insurance ("Department") was represented by its attorney, Krystle Ledvina Garcia. Respondent Donna Ehlers was present and was not represented by an attorney. The proceedings were recorded by Brandis Courser, a licensed Notary Public. Exhibits 1 through 13 were received, and the matter was taken under advisement. As a result of the hearing and evidence, the hearing officer makes the following Findings of Fact, Conclusions of Law, and Recommended Order.

FINDINGS OF FACT

1. Respondent is an approved insurance education course sponsor and instructor for the course "Crop and Hail Prelicensing." Respondent's registered business address with the Nebraska Department of Insurance is 214 S. Broadwell, Grand Island, NE 68803. (E2).
2. The Department of Insurance is the duly designated agency of the State of Nebraska empowered to exercise jurisdiction and control over certification of approved

prelicensing education courses in Nebraska pursuant to Neb. Rev. Stat. §§ 44-101.01 and 44-3909 et seq., and Title 210 of the Nebraska Administrative Code, Chapter 67. Said jurisdiction and control have been present at all times material hereto.

3. The Petition and Notice of Hearing in this matter, along with an Order Continuing Hearing dated September 2, 2016 and an Order Continuing Hearing dated December 13, 2016, were served upon Respondent at her registered business address. (E1).

4. Gina Goodro testified at the hearing. Ms. Goodro is an Insurance Education Analyst in the Producer Licensing Division of the Nebraska Department of Insurance. Her duties include reviewing and approving prelicensing education courses for compliance with the Insurance Producers Licensing Act, Neb. Rev. Stat. § 44-3909 et seq., and the Department of Insurance regulation for Prelicensing Education Requirements, Title 210 of the Nebraska Administrative Code, Chapter 67.

5. On or about October 2, 2015, a complaint was filed with Ms. Goodro regarding a prelicensing course conducted by Respondent on August 11, 2015. The complaint alleged that Respondent's class material does not properly prepare students for the licensing exam. (E3).¹

6. Ms. Goodro proceeded to investigate the complaint by sending a letter to Respondent. The certified mail return receipt attached to Exhibit 5 demonstrates that the letter was delivered on October 8, 2015. In that letter, Ms. Goodro requested Respondent's course outline, a copy of the examination, and all relevant course materials for review. Ms.

¹ The complaint and investigation also involved the condition of Respondent's classroom facilities. These Findings of Fact and the resulting Order are not an approval or disapproval of the classroom facilities. Facilities must comply with 210 Neb. Admin. Code § 14.

Goodro also noted that the course was approved in 1999, and asked Respondent when she last updated the course content to comply with changes in Nebraska law and the licensing exam. Ms. Goodro's letter also notified Respondent that failure to respond to the Department within fifteen working days may result in loss of certification of her course. (E5).

7. Ms. Ehlers' response to Ms. Goodro's request for information was received by the Department on November 9, 2015. The response, Exhibit 6, includes a one-page letter and a stack of papers almost an inch thick. In the letter, dated November 5, 2015, Ms. Ehlers wrote, "I have not updated my course content because Prometric has not updated their exam." (E6).

8. On December 17, 2015, Ms. Goodro sent another letter to Respondent requesting further clarification regarding her course content. Exhibit 7 is a copy of that letter with an attached certified mail return receipt showing delivery on January 1, 2016. The letter included a current crop exam content outline from Prometric and noted, "Please review for several changes that have been made during recent years." The second page of the letter was an attached list of detailed instructions for Respondent to bring her course content into compliance. The list instructed Respondent to revise her final exam so that all answers would be multiple choice with four options, each question must have only one correct response, and "all of the above" or "none of the above" are not acceptable answers. The letter warned Respondent that failure to respond to the department by end of business on February 1, 2016 may result in loss of certification of her course. (E7).

9. On January 4, 2016, Ms. Goodro sent a follow-up letter enclosing her December 17, 2015 letter to Respondent. The certified mail return receipt attached to Exhibit 8 shows delivery on January 11, 2016. (E8).

10. On February 4, 2016, the Department received Respondent's response to Ms. Goodro's December 17, 2015 request for further clarification and changes to Respondent's course content. The response, Exhibit 9, is a stack of photocopied materials, some of them with smaller pieces of paper taped to the pages or stapled to the pages, with multiple choice exams disbursed throughout. The ethics multiple choice questions include, for example: "Ethical problems frequently arise by agents who (A) Lack religious training; (B) Are new to the business; (C) Come from broken homes; (D) Lack knowledge and skill" and "We learn right and wrong from (A) Church; (B) Family; (C) Friends; (D) All of the above." (E9).

11. At the hearing on this matter, Ms. Goodro testified that the revised course content submitted by Respondent would not be approved if it were submitted as a new course.

12. Exhibit 10 is an email exchange between Ms. Goodro and Matthew McGrady of Prometric, which demonstrates that Prometric changed its crop outlines four times from 2010 to 2015.

13. Exhibit 11 is correspondence to the Department from Respondent dated September 8, 2016, which states, "Prometric has not updated their course outline in numerous years."

14. On or about January 12, 2001, Respondent entered a Consent Order with the Department in Cause No. A-1421, in which she admitted that on or about July 25, 2000, Respondent issued a certificate of completion to John M. O'Brien, an individual who did not complete the approved course. Respondent consented to revocation of her insurance agent's license in the Consent Order. (E 12).

15. On or about October 18, 2005, the Department issued Findings of Fact, Conclusions of Law, Recommended Order and Order in Cause No. A-1624, captioned "In

the Matter of the Denial of Application for License for Donna Kay Ehlers.” In the Findings of Fact, the Hearing Officer found that Respondent’s testimony lacked credibility “as Applicant also testified that in November 2003, she had again issued certificates of completion to an individual who did not attend the courses,” and found that “Applicant’s actions, as admitted, do not only violate the same insurance statute violated in the previous administrative action, but her willingness to perjure herself during the course of this license denial hearing is of utmost concern to the hearing officer.” On that basis, Respondent was denied her request for an insurance producer’s license. (E13).

DISCUSSION

Ms. Goodro gave Respondent detailed guidance about how to bring her course content into compliance with the relevant standards. Respondent’s second submission of course materials, if submitted as a new course, would not have been approved. Some of the questions in Respondent’s multiple choice exam were confusing, had more than one correct response, or included “all of the above” or “none of the above” as answers, even though Ms. Goodro had provided Respondent with instructions for revising the exam questions.

Further, Respondent perjured herself during a 2005 license denial hearing and during that hearing, she admitted she had issued certificates of completion to people who had not attended her class. This is compounded by the fact that previously, in 2001, Respondent’s insurance producer’s license was revoked for issuing a certificate of completion to a person who had not attended her class.

If Respondent wishes to teach prelicensing courses in the future, she must apply as a new instructor, as provided at 210 Neb. Admin. Code § 67-013.02.

CONCLUSIONS OF LAW

1. The Department has jurisdiction and control over preclicensing education for insurance producers in the State of Nebraska pursuant to Neb. Rev. Stat. §§ 44-101.01 and 44-3909 to 44-3913.

2. The Department has personal jurisdiction over Respondent.

3. Pursuant to 210 Neb. Admin. Code § 67-013, the Director may withdraw his approval of a preclicensing education instructor upon determining, after notice and hearing, that the instructor has:

- (B) Failed to comply with administrative and regulatory guidelines set forth by the department regarding preclicensing education;
- (C) Committed any act set forth in section 009.01 of this rule
- (D) Had an insurance producer license denied in Nebraska; or
- (H) Failed to employ acceptable instructional principles and methods.

4. Title 210 of the Nebraska Administrative Code, Section 009.01, referenced at 210 Neb. Admin. Code § 67-013.01(C) as acts that are grounds for withdrawal of approval of a preclicensing instructor, includes:

- (E) Issuing a certificate of completion to an individual who did not complete the course in accordance with the standards for certification;
- (J) Committing improprieties in connection with the teaching method, course content, or issuance of certificates for a particular course or program; and
- (K) Failing to respond to the Department within fifteen working days after receipt of an inquiry from the Department.

5. Respondent's failure to use or provide acceptable course materials, failure to recognize that Prometric had updated its outline, and failure to use the current Prometric outline, as described in the above Findings of Fact, violated 201 Neb. Admin. Code §§ 67-009.01(J) and 67-013.01(B), (C) and (H).

6. Respondent's failure to respond to Department inquiries within fifteen working days on two separate occasions, as described in the above Findings of Fact, violated 210 Neb. Admin. Code §§ 67-009.01(K) and 67-013.01(C).

7. Respondent's November 2003 issuance of certificates of completion to an individual who did not attend the courses, Respondent's willingness to perjure herself during the course of the 2005 license denial hearing in Cause No. A-1624, and the denial of an insurance producer's license to Respondent in Cause No. A-1624 violated 210 Neb. Admin. Code §§ 67-009.01(E) and (J) and 67-013.01(C) and (D).

8. These violations of 210 Neb. Admin. Code §§ 67-009.01(E), (J) and (K) and 67-013.01(B), (C), (D) and (H) are sufficient basis for the Director to withdraw his approval of Respondent as a prelicensing education instructor.

RECOMMENDED ORDER

Based on the Findings of Fact and Conclusions of Law, it is recommended that Respondent's approval as a Nebraska prelicensing education instructor be revoked.

Dated this 18 day of February, 2017.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE


HEARING OFFICER

CERTIFICATE OF ADOPTION

I have reviewed the foregoing Findings of Fact, Conclusions of Law, and Recommended Order and hereby certify that the Recommended Order is adopted as the final Order of this Department in the matter of the State of Nebraska Department of Insurance v. Donna Ehlers, Cause No. I-95.

Dated this 2 day of February, 2017.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE


BRUCE R. RAMGE
DIRECTOR OF INSURANCE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Findings of Fact, Conclusions of Law, Recommended Order, and Order was served upon Respondent by mailing a copy to her registered business address with the Department, 214 S. Broadwell, Grand Island, NE 68803, on this 2 day of February, 2017.

Brandis Couser