

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 1034

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 5-31-84
DATE FOR REVIEW 6-8-84
DATE DUE 6-14-84

Adopted w/a hearing ____
Adopted w/o hearing ✓
Temporary rule ____

Approved 6-14-84 mjc Disapproved ____ Returned to Agency ____

Resubmitted ✓
Approved ____ Disapproved ____ Due ____ Returned to Agency ____

Date filed w/Secretary of State 6-15 Revisor approved 6/1/84 disapproved ____

✓ Rule as Adopted

✓ Rule as Proposed

✓ Order Adopting 5.30.84 Date

✓ Notice of Intent to Solicit Outside Opinion SR. 7.11.83

✓ Order for rulemaking
N/A date of Hearing

____ Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
? Sufficiency no small biz statement but see Supplement to SONR.

✓ Affidavit of Mailing Notice or rulemaking
11.22.83 At least 30 days prior to ~~hearing~~/adoption

✓ Mailing list Certificate

✓ Publication in State Register
11.28.83 At least 30/~~20~~ days prior to ~~hearing~~/adoption

N/A Hearing Examiner's Report

____ Chief Hearing Examiner's Report(s)
____ Approving H.E.'s Report
____ Approving agency action

✓ Agency's Findings of Fact

____ LCRAR Report or agency Affidavit

____ Certificate of Board's Resolution Adopting Rules

____ Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness
✓ Supplement to SONR - contains small biz statement.

____ Petition for Adoption of a Rule

✓ Record (includes transcript or tape, exhibits, comments received by agency, requests for a hearing, and other relevant materials)

✓ Certificate of Compliance w/Rulemaking Procedures

✓ Affidavit of Mailing Notice of Submission to Attorney General

✓ Notice of Submission to the Attorney General

? Compliance with Ch. 188 sub 4

SF-00006-02

DEPARTMENT ATTORNEY GENERAL

STATE OF MINNESOTA
Office Memorandum

TO MICHAEL A. HATCH
Commissioner of Commerce
Attn: THOMAS F. PURSELL
Special Assist./Attorney General

DATE: 6/14/84

FROM : MARTHA J. CASSERLY MJC
Special Assistant
Attorney General

PHONE: 296-4692

SUBJECT: In the Matter of the Proposed Adoption of Rules Relating to Trade Conduct - Agent Conduct

Enclosed herewith are the rules you have submitted for approval. These rules have been approved by this office and filed with the Secretary of State. Please note that they have not been filed with the State Register. This must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

1. Affixation of stamps of the Attorney General and Secretary of State;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages to the rules in the approved set.

If you have any questions in this regard, please contact me.

Encs.

cc: Ms. Kathy Burek
Mr. Duane Harves

MJC:sa

AG copy.

Department of Commerce

Adoption of Rules Relating to Insurance Agent Conduct

Rules as Adopted

4 MCAR S 1.9011 Authority and scope.

Rules 4 MCAR SS 1.9011-1.90281 are promulgated pursuant to the authority of Minnesota Statutes, section 60A.17, as amended by Laws of Minnesota 1983, chapter 263, and are intended to govern the interest of all licensed insurance agents in this state.

4 MCAR S 1.9012 Definitions.

A. Scope. As used in 4 MCAR SS 1.9011-1.90281, the terms defined in this rule shall have the meanings given them.

B. Agent. "Agent" means an insurance agent licensed under Minnesota Statutes, section 60A.17.

C. Brokerage business. "Brokerage business" means business transacted as provided in Minnesota Statutes, section 60A.17, subdivision 3.

D. Commissioner. "Commissioner" means the commissioner of the Minnesota Department of Commerce.

E. Licensee. "Licensee" means an individual or an agency licensed under Minnesota Statutes, section 60A.17, subdivision 1.

F. Placing agent. "Placing agent" means a licensed and appointed agent of an insurer through whom an application for insurance is submitted to the insurer on behalf of a soliciting agent who was not appointed by that insurer at the time the application was solicited.

G. Soliciting agent. "Soliciting agent" means an agent who sells or attempts to sell insurance to a person.

H. Supervising agent. "Supervising agent" means an agent or general agent who contracts with, employs or engages one or more other agents to solicit applications for insurance, or to otherwise act as insurance agents on the supervising agent's behalf. In the case of an agency required to be licensed under

Minnesota Statutes, section 60A.17, subdivision 1, the supervising agents, if not specifically designated, shall be the licensed officers of the corporate agency, or the partners of a partnership agency.

4 MCAR S 1.9013 Loans from clients.

A. Requirements. No agent shall solicit or accept a loan from an individual with whom the agent came into contact in the course of the agent's business, unless the loan agreement or note is in writing, the lender is provided with a fully executed copy of the agreement or note at the time the loan is made, and the terms of the loan are lawful.

B. Unfair, dishonest, and unconscionable loans. Notwithstanding A., no agent shall solicit or accept a loan under dishonest, unfair, or unconscionable circumstances from an individual with whom the agent came into contact in the course of the agent's business. In determining whether a particular loan was solicited or accepted under dishonest, unfair, or unconscionable circumstances, the commissioner must consider the following:

1. the prior relationship between the agent and the lender;

2. the lender's age, mental state, and capacity;

3. the terms of the loan, including the amount, duration, and rate of interest, and the agent's compliance with those terms;

4. provisions for collateral or security;

5. the lender's income and net worth;

6. the involvement or lack of involvement of a family member of the lender, or some other neutral third party, in the negotiation of the loan;

7. any prior history of unfair treatment of the lender which the agent knew or should have known about;

8. indications of high pressure solicitation, coercion, intimidation, or undue influence by the agent in securing the loan;

9. the agent's representations regarding the need for or

intended use of the loan; and

10. any other factors which reflect on whether the loan was dishonest, unfair, or unconscionable.

C. Records required of agent. An agent who accepts or has an outstanding loan from an individual with whom the agent came into contact in the course of the agent's business, must immediately compile and maintain for at least six years after the loan has been fully repaid, a list of the individuals from whom the agent has borrowed money, together with all documentation relating to the loans and the circumstances under which each was made.

4 MCAR S 1.9014 Delivery of policies.

Policies, certificates, or other evidence of insurance which are received by an agent from an insurer for delivery to an insured must be delivered or mailed to the insured by the agent within 30 working days of the agent's receipt, unless the insured agrees in writing that the agent may retain them.

SNR says 20 (twenty) twice

4 MCAR S 1.9015 Receipts for materials.

An agent who takes possession of an insured's or a potential insured's insurance policies, certificates, or other documents pertaining to existing or pending insurance, must leave a written receipt for those materials at the time the agent receives the materials. The receipt must contain an itemized list of the materials received, the agent's name, and the address and telephone number of the agency or other place where the agent can be contacted. The receipt must be dated and signed by the agent.

from the insured ?

not clear with whom. OK

4 MCAR S 1.9016 Other licenses.

It is an untrustworthy practice within the meaning of Minnesota Statutes, section 60A.17, subdivision 6, for an insurance agent to engage in any unfair, deceptive, dishonest, untrustworthy, or fraudulent conduct which leads to the revocation of a license which the agent holds under Minnesota Statutes, chapter 80A or 82.

tautological ~~rebuttable~~ irrebuttable presumption?

4 MCAR S 1.9017 Criminal convictions; disciplinary actions in other states.

A. Report of conviction. An agent who is convicted of a felony, gross misdemeanor, or a misdemeanor involving moral turpitude must report the conviction to the commissioner within ten working days of the conviction.

B. Report of disciplinary action. An agent whose insurance, securities, or real estate license is suspended or revoked in another state, or who has been ordered to pay a civil penalty because of conduct in the insurance, securities, or real estate industries in another state, must report the disciplinary action to the commissioner within ten working days of the effective date of the action.

4 MCAR S 1.9018 Duties of supervising agents.

A. Agents' behavior and licensing. A supervising agent shall have the duty to ensure that contracted, employed, or engaged agents:

1. are properly licensed in the lines of insurance in which they do business;

2. promptly remit all premiums and return premiums, refunds, claim settlements, or other money or things of value in the agents' possession obtained as a result of an insurance transaction and due and payable to any person, firm, or insurer; and

3. comply with laws and rules of the Department of Commerce.

B. Establish written procedures. A supervising agent must establish, maintain, and enforce written procedures which will ensure proper supervision of the activities of each agent and compliance with insurance laws and rules.

C. ~~Annual~~ Account examination. Every supervising agent must conduct an examination for each agent of those client accounts ~~for each agent who is~~ which are within the scope of the supervisor's responsibility. The examinations must be conducted as often as is necessary for the supervising agent to discharge his supervisory responsibilities.

4 MCAR S 1.9019 Suitability.

In recommending the purchase of any life, endowment, annuity, life-endowment, or ~~medical~~ medicare supplement insurance to a customer, an agent must have reasonable grounds for believing that the recommendation is suitable for the customer, and must make reasonable inquiries to determine suitability. The suitability of a recommended purchase of insurance will be determined by reference to the totality of the particular customer's circumstances, including, but not limited to, the customer's income, the customer's need for insurance, and the values, benefits, and costs of the customer's existing insurance program, if any, when compared to the values, benefits, and costs of the recommended policy or policies.

4 MCAR S 1.9020 High standards of commercial honor.

Every agent must observe high standards of commercial honor and just and equitable principles of trade in the conduct of the agent's insurance business.

4 MCAR S 1.9021 Registered office for resident agents.

Every agent who is licensed as a resident agent must maintain a registered office for service of process in this state. The address of the office must be specified on all license applications and renewal applications.

4 MCAR S 1.9022 License display and use.

A license must be displayed in the licensee's office in a place where it can readily be viewed and inspected.

Any written or oral advertisement or representation which refers to licensing, used by a licensee, must contain a disclaimer that the reference to licensing is not an endorsement, sponsorship, or implied endorsement or sponsorship of the licensee or its products, by the state of Minnesota, the Department of Commerce, or any other state agency.

4 MCAR S 1.9023 Receipt of client funds.

An agent who receives funds from a client in connection with an insurance transaction receives and holds those funds in

a fiduciary capacity.

An agent holding funds of a client must, each month, provide to the client an itemized statement showing the amount of money held.

4 MCAR S 1.9024 Mandatory financial records of agents and agencies.

A. Type of records. Every agent and agency must keep a record of all funds received for or from clients, including cash, notes, savings certificates, uncashed or uncollected checks, or other similar instruments. (Insurers represented by exclusive agents may compile and maintain the financial records required by this rule on their agents' behalf.) The records must set forth the date funds were received, from whom received, the amount received, the date of deposit of the funds into the business account of the agent or agency, and the monthly balance of the account in which the funds are deposited. Each agent and agency must maintain a cash receipts journal and a cash disbursements journal, or similar records, in accordance with generally accepted accounting principles.

B. Separate records. Each agent and agency must keep a separate record for each client or transaction, accounting for all funds which have been deposited in the agent's business account. These records must set forth the information sufficient to identify the transaction and the parties thereto. At a minimum, each record must set forth:

1. the date funds are deposited;
2. the amount deposited;
3. the date of each related disbursement;
4. the check number of each related disbursement;
5. the amount of each related disbursement; and
6. a description of each disbursement.

C. Examination of records. All records must be maintained for at least six years, and ~~funds~~ must be available for examination by the commissioner or a designee in accordance with Minnesota Statutes, section 60A.031.

4 MCAR S 1.9025 Mandatory complaint records.

Every agent and agency must compile and maintain a separate complaint file for each agent against whom a complaint, grievance, or allegation is made. The file must contain all written notes, reports, correspondence, or other documents made or received by an agent or agency, relating to customer grievances or allegations that an agent, agency, or person associated with an agent or agency has engaged in any unfair, false, misleading, dishonest, fraudulent, untrustworthy, coercive, or financially irresponsible practice, or has violated any insurance law or rule. The agent or agency must maintain the records for at least six years after the date of the complaint.

4 MCAR S 1.9026 Termination of appointments or contracts.

An insurer or agency which terminates an agent's appointment, or its contract or association with an agent based entirely or in part on a complaint or alleged violation of law, or with knowledge of an alleged violation of law, including, but not limited to, the failure to remit premiums, must, within ten working days of the termination, forward to the commissioner a written statement of the reason for the termination. The statement must include the names, addresses, and, if available, telephone numbers of all persons having knowledge of the matter; copies of any applications, checks, or other documents relating to the complaint or alleged violation which are in the insurer's or agency's possession or control; copies of all statements or affidavits taken from any person in connection with the complaint or allegations; and a current statement of the agent's account with the insurer or agency.

4 MCAR S 1.9027 Refunds.

An agent who receives a request for cancellation of a policy must make the refund or initiate the refund procedures with the insurer, within ten days of the agent's receipt of the request. An agent who receives a refund from an insurer for the account of, or for delivery to, an insured or former insured,

must deliver or mail the refund, or cause it to be delivered or mailed to the insured or former insured within five days of receipt.

4 MCAR S 1.9028 Insurance in connection with a loan.

No agent shall misrepresent the necessity for obtaining insurance in connection with a loan, nor the terms of such insurance.

4 MCAR S 1.90281 Penalties.

Violations of 4 MCAR SS 1.9011-1.90281 subject the violator to the penalties described in Minnesota Statutes, sections 60A.17, subdivision 6c, and 72A.22 to 72A.29.

Renumbering. Renumber INS 20 as 4 MCAR S 1.9010.

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
JUN 15 1984
Joan Anderson Growe
Secretary of State

APPROVED AS TO FORM AND LEGALITY
June 14 1984
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY M J Cassidy
SPECIAL ASSISTANT ATTORNEY GENERAL

10:05 AM

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of the Proposed Adoption of Rules Relating to Trade Conduct - Agent Conduct

ORDER ADOPTING RULES

Notice of the Commissioner's intent to adopt the above-entitled rules without a public hearing was published in the State Register on November 28, 1983 and was sent by the United States mail to all persons on the list maintained by the Department of Commerce pursuant to Minn. Stat. § 14.14, subd. 1a, on November 22, 1983.

After affording interested and affected persons an opportunity to submit comments for 30 days after Notice, receiving fewer than seven (7) written requests for a public hearing within the 30-day comment period, reviewing and considering the comments, and determining the need for and reasonableness of the above-captioned rules,

NOW, THEREFORE, IT IS ORDERED that these rules identified as 4 MCAR §§ 1.9011 - 1.90281 are adopted this 30th day of May, 1984 pursuant to authority vested in me by Minn. Stat. § 60A.17.

Michael A. Hatch
Commissioner of Commerce

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of the Proposed Adoption of
Rules Relating to Insurance Agent Conduct

ORDER FOR NOTICE
OF INTENT TO ADOPT
RULES WITHOUT
PUBLIC HEARING

IT IS ORDERED this 14th day of November, 1983 that Notice of Intent to Adopt Rules Without Public Hearing in the above-entitled matter be given to all persons who have registered their names with the Department of Commerce for that purpose and be published in the State Register.

Michael A. Hatch
Commissioner of Commerce

To: Marty.
Date: 6/5/84
Re: Commerce — Insurance Agent Conduct.

Rules as Adopted

p. 3 . 9015
line 21 For greater clarity, this rule should be Reworded to make clear that a receipt for written materials should be left with or provided to the insured or potential insured.

p. 3 . 9016
lines 29, 32 This rule provides that it is an untrustworthy practice to be, among other things, untrustworthy. So what else is new! It seems somewhat useless to state the obvious

. 9020
p. 5 This rule provides that agents must observe high standards of commercial honor, etc. .... Unless such standards are generally known, this rule hardly seems specific enough to be worthy of being called a Rule.

Department of Commerce

Notice of Intent to Solicit Outside Opinion Regarding Proposed Rules Governing Insurance Agents' Practices

Notice is hereby given that the Department of Commerce is seeking information or opinions from persons outside the agency in preparing to promulgate new rules governing insurance agents' practices. Promulgation of these rules is authorized by Minnesota Statutes, section 60A.17, subd. 15.

The Department of Commerce requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing to: Dale McDonnell, Department of Commerce, 500 Metro Square Building, St. Paul, MN, 55101, (612) 297-3301.

All statements of information and comment shall be accepted until September 1, 1983. Any written material received by the Department of Commerce shall become part of the record in the event that the rules are promulgated.

Thomas L. O'Malley

Assistant Commissioner

Oral statements of information and comment will be received during regular business hours over the telephone at (612) 296-1486, and in person at the above address.

All statements of information and comment must be received by July 25, 1983. Any written material received by the department shall become part of the record submitted to the Attorney General.

July 1, 1983

Jim Nichols
Commissioner of Agriculture

Department of Commerce

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Thomas L. O'Malley
Assistant Commissioner

Department of Commerce Insurance Division

Meeting Notice

Minnesota Comprehensive Health Association
Board of Directors
Annual Meeting
Tuesday, September 13, 1983, at 9:00 A.M.
Federated of Owatonna
Owatonna, MN

Changes in any scheduled meetings and notices of any additional meetings will be posted or otherwise be available upon inquiry at the office of the Insurance Division, and may be obtained by telephone from the Life and Health Section, telephone (612) 296-2202.

Department of Commerce Banking Division

Bulletin No. 2790 Regarding Maximum Lawful Rate of Interest for Mortgage and Contracts for Deed for the Month of July 1983

Notice is hereby given that pursuant to Section 47.20, Subd. 4a, Minnesota Statutes 1982, as amended by Chapter 288, 1983 Session Laws, the maximum lawful rate of interest for conventional home mortgages for the month of July 1983 is fourteen (14.00) percentage points. Further, the maximum lawful rate of interest for contracts for deed for the month of July 1983 is fourteen (14.00) percentage points.

It is important to note that this maximum lawful interest rate does not apply to all real estate loans and contracts for deed. Under Minnesota's interest rate moratorium, which is identical to the Federal Usury Preemption, in most instances any rate may be charged on real estate mortgages and contracts for deed that constitute first liens.

In the Matter of the Proposed Adoption of
Rules Relating to Insurance Agent Conduct

AFFIDAVIT OF
MAILING

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Debbi J. Lindlief, being first duly sworn, deposes and says:

That on the 22nd day of November, 1983, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Intent to Adopt Rules Without Public Hearing by depositing in the State of Minnesota Central Mail System for United States mailing at said City of St. Paul, a copy properly enveloped, with postage prepaid, on all persons and associations who have requested that their names be placed on file with the Department of Commerce for the purpose of receiving notice of the proposed adoption of rules.

A copy of the proposed rules is attached.

Debbi J. Lindlief

Subscribed and sworn to before me this
22nd day of November, 1983.

William J. Elliott

NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Commission Expires June 2, 1988

State of Minnesota
Department of Commerce

In the Matter of the Proposed Adoption of
Rules Relating to Insurance Agent Conduct

Notice of Intent to Adopt Rules Without a Public Hearing

Notice is hereby given that the Department of Commerce proposes to adopt the above-entitled rules without a public hearing. The Commissioner of Commerce has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, section 14.21 (1982).

Persons interested in these rules shall have 30 days to submit comments. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change.

No public hearing will be held unless seven or more persons make a written request for a hearing within the 30-day comment period. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes, section 14.14, subd. 1.

Persons who wish to submit comments or a written request for a public hearing should submit them to Thomas L. O'Malley, Department of Commerce, 500 Metro Square Building, St. Paul, MN 55101.

Authority for the adoption of these rules is contained in Minnesota Statutes, section 60A.17. Additionally, a Statement of Need and Reasonableness describing the need for and reasonableness of each provision and identifying the data and information relied upon to support the proposed rules has been prepared and is available upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to Debbi Lindlief, Department of Commerce, 500 Metro Square Building, St. Paul, Minnesota 55101.

A copy of the proposed rules is attached to this Notice.

Copies of this Notice and the proposed rules are available and may be obtained by contacting Debbi Lindlief at the above address.

Michael A. Hatch
Commissioner of Commerce

Rules as Proposed (all new material)

4 MCAR S 1.9011 Authority and scope.

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4 MCAR S 1.9012 Definitions.

A. Scope. As used in 4 MCAR SS 1.9011-1.90281, the terms defined in this rule shall have the meanings given them.

B. Agent. "Agent" means an insurance agent licensed under Minnesota Statutes, section 60A.17.

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APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

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OFFICE BY:

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An agent holding funds of a client must, each month, provide to the client an itemized statement showing the amount of money held.

APPROVED IN THE
REVISOR OF STATUTES
OFFICE BY:

4 MCAR S 1.9024 Mandatory financial records of agents and agencies.

A. Type of records. Every agent and agency must keep a record of all funds received for or from clients, including cash, notes, savings certificates, uncashed or uncollected checks, or other similar instruments. Insurers represented by exclusive agents may compile and maintain the financial records required by this rule on their agents' behalf. The records must set forth the date funds were received, from whom received, the amount received, the date of deposit of the funds into the business account of the agent or agency, and the monthly balance of the account in which the funds are deposited. Each agent and agency must maintain a cash receipts journal and a cash disbursements journal, or similar records, in accordance with generally accepted accounting principles.

B. Separate records. Each agent and agency must keep a separate record for each client or transaction, accounting for all funds which have been deposited in the agent's business account. These records must set forth the information sufficient to identify the transaction and the parties thereto. At a minimum, each record must set forth:

1. the date funds are deposited;
2. the amount deposited;
3. the date of each related disbursement;
4. the check number of each related disbursement;
5. the amount of each related disbursement; and
6. a description of each disbursement.

C. Examination of records. All records must be maintained for at least six years, and funds must be available for examination by the commissioner or a designee in accordance with Minnesota Statutes, section 60A.031.

4 MCAR S 1.9025 Mandatory complaint records.

Every agent and agency must compile and maintain a separate complaint file for each agent against whom a complaint, grievance, or allegation is made. The file must contain all

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written notes, reports, correspondence, or other documents made or received by an agent or agency, relating to customer grievances or allegations that an agent, agency, or person associated with an agent or agency has engaged in any unfair, false, misleading, dishonest, fraudulent, untrustworthy, coercive, or financially irresponsible practice, or has violated any insurance law or rule. The agent or agency must maintain the records for at least six years after the date of the complaint.

4 MCAR S 1.9026 Termination of appointments or contracts.

An insurer or agency which terminates an agent's appointment, or its contract or association with an agent based entirely or in part on a complaint or alleged violation of law, or with knowledge of an alleged violation of law, including, but not limited to, the failure to remit premiums, must, within ten working days of the termination, forward to the commissioner a written statement of the reason for the termination. The statement must include the names, addreses, and, if available, telephone numbers of all persons having knowledge of the matter; copies of any applications, checks, or other documents relating to the complaint or alleged violation which are in the insurer's or agency's possession or control; copies of all statements or affidavits taken from any person in connection with the complaint or allegations; and a current statement of the agent's account with the insurer or agency.

4 MCAR S 1.9027 Refunds.

An agent who receives a request for cancellation of a policy must make the refund or initiate the refund procedures with the insurer, within ten days of the agent's receipt of the request. An agent who receives a refund from an insurer for the account of, or for delivery to, an insured or former insured, must deliver or mail the refund, or cause it to be delivered or mailed to the insured or former insured within five days of receipt.

4 MCAR S 1.9028 Insurance in connection with a loan.

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

No agent shall misrepresent the necessity for obtaining insurance in connection with a loan, nor the terms of such insurance.

4 MCAR S 1.90281 Penalties.

Violations of 4 MCAR SS 1.9011-1.90281 subject the violator to the penalties described in Minnesota Statutes, sections 60A.17, subdivision 6c, and 72A.22 to 72A.29.

Renumbering. Renumber INS 20 as 4 MCAR S 1.9010.

APPROVED IN THE REVISOR OF STATUTES' OFFICE BY:

OFFICE OF THE REVISOR OF STATUTES

Proposed Rule

RD423

Agency: Department of Commerce

Division:

Agency Contact: Deb Lindlief 297-4288

Rule Numbers: 4 MCAR SS 1.9011-1.90281

Title: Proposed Rules Relating to Insurance Agent Practices

Type of Rules: Permanent

Incorporations by Reference: None

Duplication of Statutory Language: None

The attached rules are approved as to form.

Steven C. Cross
Revisor of Statutes

John C. Fuller
Assistant Deputy Revisor
Phone: 296-0955
Date: November 7, 1983

commissioner unless the eligible or qualified applicant shows hardship causing the delay. Any claim of hardship must be submitted in writing to the department. The commissioner shall evaluate and determine the reasonableness of any claim of hardship.

3 MCAR § 1.1348 [Temporary] Approval; payment.

A. Verification; approval. All requests and receipts for investment reimbursements submitted in support of an application are subject to verification and approval by the commissioner.

B. Schedule for payments. After the commissioner's approval, investment reimbursements must be made for investment expenditures in accordance with Laws of Minnesota 1983, chapter 232, section 2. All investment reimbursements must be made by June 30, 1985.

Department of Commerce

Proposed Adoption of Rules Relating to Insurance Agent Conduct

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Department of Commerce proposes to adopt the above-entitled rules without a public hearing. The Commissioner of Commerce has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, section 14.21 (1982).

Persons interested in these rules shall have 30 days to submit comments. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change.

No public hearing will be held unless seven or more persons make a written request for a hearing within the 30-day comment period. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes, section 14.14, subd. 1.

Persons who wish to submit comments or a written request for a public hearing should submit them to Thomas L. O'Malley, Department of Commerce, 500 Metro Square Building, St. Paul, MN 55101.

Authority for the adoption of these rules is contained in Minnesota Statutes, section 60A.17. Additionally, a Statement of Need and Reasonableness describing the need for and reasonableness of each provision and identifying the data and information relied upon to support the proposed rules has been prepared and is available upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to Debbi Lindlief, Department of Commerce, 500 Metro Square Building, St. Paul, Minnesota 55101.

A copy of the proposed rules is attached to this Noticce.

Copies of this Notice and the proposed rules are available and may be obtained by contacting Debbi Lindlief at the above address.

Michael A. Hatch
Commissioner of Commerce

Rules as Proposed (all new material)

4 MCAR § 1.9011 Authority and scope.

Rules 4 MCAR §§ 1.9011-1.90281 are promulgated pursuant to the authority of Minnesota Statutes, section 60A.17, as amended by Laws of Minnesota 1983, chapter 263, and are intended to govern the interest of all licensed insurance agents in this state.

4 MCAR § 1.9012 Definitions.

A. Scope. As used in 4 MCAR §§ 1.9011-1.90281, the terms defined in this rule shall have the meanings given them.

B. Agent. "Agent" means an insurance agent licensed under Minnesota Statutes, section 60A.17.

C. Brokerage business. "Brokerage business" means business transacted as provided in Minnesota Statutes, section 60A.17, subdivision 3.

D. Commissioner. "Commissioner" means the commissioner of the Minnesota Department of Commerce.

E. Licensee. "Licensee" means an individual or an agency licensed under Minnesota Statutes, section 60A.17, subdivision 1.

F. Placing agent. "Placing agent" means a licensed and appointed agent of an insurer through whom an application for insurance is submitted to the insurer on behalf of a soliciting agent who was not appointed by that insurer at the time the application was solicited.

G. Soliciting agent. "Soliciting agent" means an agent who sells or attempts to sell insurance to a person.

H. Supervising agent. "Supervising agent" means an agent or general agent who contracts with, employs or engages one or more other agents to solicit applications for insurance, or to otherwise act as insurance agents on the supervising agent's behalf. In the case of an agency required to be licensed under Minnesota Statutes, section 60A.17, subdivision 1, the supervising agents, if not specifically designated, shall be the licensed officers of the corporate agency, or the partners of a partnership agency.

4 MCAR § 1.9013 Loans from clients.

A. Requirements. No agent shall solicit or accept a loan from an individual with whom the agent came into contact in the course of the agent's business, unless the loan agreement or note is in writing, the lender is provided with a fully executed copy of the agreement or note at the time the loan is made, and the terms of the loan are lawful.

B. Unfair, dishonest, and unconscionable loans. Notwithstanding A., no agent shall solicit or accept a loan under dishonest, unfair, or unconscionable circumstances from an individual with whom the agent came into contact in the course of the agent's business. In determining whether a particular loan was solicited or accepted under dishonest, unfair, or unconscionable circumstances, the commissioner must consider the following:

1. the prior relationship between the agent and the lender;

2. the lender's age, mental state, and capacity;

3. the terms of the loan, including the amount, duration, and rate of interest, and the agent's compliance with those terms;

4. provisions for collateral or security;

5. the lender's income and net worth;

6. the involvement or lack of involvement of a family member of the lender, or some other neutral third party, in the negotiation of the loan;

7. any prior history of unfair treatment of the lender which the agent knew or should have known about;

8. indications of high pressure solicitation, coercion, intimidation, or undue influence by the agent in securing the loan;

9. the agent's representations regarding the need for or intended use of the loan; and

10. any other factors which reflect on whether the loan was dishonest, unfair, or unconscionable.

C. Records required of agent. An agent who accepts or has an outstanding loan from an individual with whom the agent came into contact in the course of the agent's business, must immediately compile and maintain for at least six years after the loan has been fully repaid, a list of the individuals from whom the agent has borrowed money, together with all documentation relating to the loans and the circumstances under which each was made.

4 MCAR § 1.9014 Delivery of policies.

Policies, certificates, or other evidence of insurance which are received by an agent from an insurer for delivery to an insured must be delivered or mailed to the insured by the agent within 30 working days of the agent's receipt, unless the insured agrees in writing that the agent may retain them.

4 MCAR § 1.9015 Receipts for materials.

An agent who takes possession of an insured's or a potential insured's insurance policies, certificates, or other documents

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pertaining to existing or pending insurance, must leave a written receipt for those materials at the time the agent receives the materials. The receipt must contain an itemized list of the materials received, the agent's name, and the address and telephone number of the agency or other place where the agent can be contacted. The receipt must be dated and signed by the agent.

4 MCAR § 1.9016 Other licenses.

It is an untrustworthy practice within the meaning of Minnesota Statutes, section 60A.17, subdivision 6, for an insurance agent to engaged in any unfair, deceptive, dishonest, untrustworthy, or fraudulent conduct which leads to the revocation of a license which the agent holds under Minnesota Statutes, chapter 80A or 82.

4 MCAR § 1.9017 Criminal convictions; disciplinary actions in other states.

A. Report of conviction. An agent who is convicted of a felony, gross misdemeanor, or a misdemeanor involving moral turpitude must report the conviction to the commissioner within ten working days of the conviction.

B. Report of disciplinary action. An agent whose insurance, securities, or real estate license is suspended or revoked in another state, or who has been ordered to pay a civil penalty because of conduct in the insurance, securities, or real estate industries in another state, must report the disciplinary action to the commissioner within ten working days of the effective date of the action.

4 MCAR § 1.9018 Duties of supervising agents.

A. Agents' behavior and licensing. A supervising agent shall have the duty to ensure that contracted, employed, or engaged agents:

1. are properly licensed in the lines of insurance in which they do business;

2. promptly remit all premiums and return premiums, refunds, claim settlements, or other money or things of value in the agents' possession obtained as a result of an insurance transaction and due and payable to any person, firm, or insurer; and

3. comply with laws and rules of the Department of Commerce.

B. Establish written procedures. A supervising agent must establish, maintain, and enforce written procedures which will ensure proper supervision of the activities of each agent and compliance with insurance laws and rules.

C. Annual account examination. Every supervising agent must conduct an examination of those client accounts for each agent who is within the scope of the supervisor's responsibility. The examinations must be conducted as often as is necessary for the supervising agent to discharge his supervisory responsibilities.

4 MCAR § 1.9019 Suitability.

In recommending the purchase of any life, endowment, annuity, life-endowment, or medical supplement insurance to a customer, an agent must have reasonable grounds for believing that the recommendation is suitable for the customer, and must make reasonable inquiries to determine suitability. The suitability of a recommended purchase of insurance will be determined by reference to the totality of the particular customer's circumstances, including, but not limited to, the customer's income, the customer's need for insurance, and the values, benefits, and costs of the customer's existing insurance program, if any, when compared to the values, benefits, and costs of the recommended policy or policies.

4 MCAR § 1.9020 High standards of commercial honor.

Every agent must observe high standards of commercial honor and just and equitable principles of trade in the conduct of the agent's insurance business.

4 MCAR § 1.9021 Registered office for resident agents.

Every agent who is licensed as a resident agent must maintain a registered office for service of process in this state. The address of the office must be specified on all license applications and renewal applications.

4 MCAR § 1.9022 License display and use.

A license must be displayed in the licensee's office in a place where it can readily be viewed and inspected.

Any written or oral advertisement or representation which refers to licensing, used by a licensee, must contain a disclaimer that the reference to licensing is not an endorsement, sponsorship, or implied endorsement or sponsorship of the licensee or its products, by the state of Minnesota, the Department of Commerce, or any other state agency.

4 MCAR § 1.9023 Receipt of client funds.

An agent who receives funds from a client in connection with an insurance transaction receives and holds those funds in a fiduciary capacity.

An agent holding funds of a client must, each month, provide to the client an itemized statement showing the amount of money held.

4 MCAR § 1.9024 Mandatory financial records of agents and agencies.

A. Type of records. Every agent and agency must keep a record of all funds received for or from clients, including cash, notes, savings certificates, uncashed or uncollected checks, or other similar instruments. Insurers represented by exclusive agents may compile and maintain the financial records required by this rule on their agents' behalf. The records must set forth the date funds were received, from whom received, the amount received, the date of deposit of the funds into the business account of the agent or agency, and the monthly balance of the account in which the funds are deposited. Each agent and agency must maintain a cash receipts journal and a cash disbursements journal, or similar records, in accordance with generally accepted accounting principles.

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1. the date funds are deposited;
2. the amount deposited;
3. the date of each related disbursement;
4. the check number of each related disbursement;
5. the amount of each related disbursement; and
6. a description of each disbursement.

C. Examination of records. All records must be maintained for at least six years, and funds must be available for examination by the commissioner or a designee in accordance with Minnesota Statutes, section 60A.031.

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Every agent and agency must compile and maintain a separate complaint file for each agent against whom a complaint, grievance, or allegation is made. The file must contain all written notes, reports, correspondence, or other documents made or received by an agent or agency, relating to customer grievances or allegations that an agent, agency, or person associated with an agent or agency has engaged in any unfair, false, misleading, dishonest, fraudulent, untrustworthy, coercive, or financially irresponsible practice, or has violated any insurance law or rule. The agent or agency must maintain the records for at least six years after the date of the complaint.

4 MCAR § 1.9026 Termination of appointments or contracts.

An insurer or agency which terminates an agent's appointment, or its contract or association with an agent based entirely or in part on a complaint or alleged violation of law, or with knowledge of an alleged violation of law, including, but not limited to, the failure to remit premiums, must, within ten working days of the termination, forward to the commissioner a written statement of the reason for the termination. The statement must include the names, addresses, and if available, telephone numbers of all persons having knowledge of the matter; copies of any applications, checks, or other documents relating to the complaint or alleged violation which are in the insurer's or agency's possession or control; copies of all statements or affidavits taken from any person in connection with the complaint or allegations; and a current statement of the agent's account with the insurer or agency.

4 MCAR § 1.9027 Refunds

An agent who receives a request for cancellation of a policy must make the refund or initiate the refund procedures with the insurer, within ten days of the agent's receipt of the request. An agent who receives a refund from an insurer for the account of, or for delivery to, an insured or former insured, must deliver or mail the refund, or cause it to be delivered or mailed to the insured or former insured within five days of receipt.

4 MCAR § 1.9028 Insurance in connection with a loan.

No agent shall misrepresent the necessity for obtaining insurance in connection with a loan, nor the terms of such insurance.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

4 MCAR § 1.90281 Penalties.

Violations of 4 MCAR §§ 1.9011-1.90281 subject the violator to the penalties described in Minnesota Statutes, sections 60A.17, subdivision 6c, and 72A.22 to 72A.29.

Renumbering. Renumber INS 20 as 4 MCAR § 1.9010.

State Board of Education (State Board for Vocational Education) Department of Education Vocational-Technical Education Division

Proposed Rules Governing Chapter Six: Post-Secondary Vocational-Technical Education (5 MCAR § 1.0100-1.01101) and Chapter Six-A: Adult Vocational-Technical Education (5 MCAR § 1.0111-1.01117).

Notice of Intent to Adopt Policy without a Public Hearing

Notice is hereby given that the Post-Secondary and Adult Vocational-Technical Education Sections propose to change the above entitled Rules to Policies without a public hearing. It has been determined that the proposed adoption of these policies will be noncontroversial in nature and authorization is granted by MN1983, Chapter 258, Section 63.

Temporary policy will be adopted at the January, 1984 meeting of the State Board of Vocational-Technical Education with final policy adoption set for the March and April, 1984 meetings.

Persons who wish to submit comments should do so in writing or in person during regular business hours to:

Dr. Rosemary T. Fruehling
Division of Vocational-Technical Education
541 Capitol Square Building
550 Cedar Street
St. Paul, MN 55101

Department of Labor and Industry Occupational Safety and Health Division

Emergency Temporary Standard Limiting Employee Exposure to Asbestos

Notice is hereby given that Steve Keefe, Commissioner of the Department of Labor and Industry, has determined that employees in Minnesota are exposed to grave danger from exposure to asbestos. In accordance with Minn. Stat. § 182.655, Subd. 11 (1982), the Commissioner has determined that an Emergency Temporary Standard (ETS) must be adopted to protect workers from this grave danger. This action by the Minnesota Department of Labor and Industry adopts an Emergency Temporary Standard identical to the ETS adopted by the U.S. Department of Labor Occupational Safety and Health Administration (federal OSHA) on November 4, 1983 (Federal Register, Vol. 48, No. 215 dated November 4, 1983).

This Emergency Temporary Standard reduces the permissible exposure limit (PEL) for asbestos from 2 fibers (longer than 5 micrometers) per cubic centimeter (2 f/cc) as an eight-hour time-weighted average (TWA) to 0.5 f/cc. The basis for this ETS is federal OSHA's determination that continued employee exposure to asbestos under current conditions that exceed 0.5 f/cc presents a grave danger of developing incurable asbestos-induced cancer and asbestosis to exposed employees and that an emergency standard is necessary to protect them. The determination that a grave danger currently exists is predicted upon federal OSHA's evaluation of relevant scientific data, policy considerations, exposure patterns of workers and quantitative risk estimates. The risk assessment predicts three excess cancer deaths per 1,000 workers who have been exposed to asbestos for a one-year period at the current allowable exposure level.

The Emergency Temporary Standard consists of revisions to the existing permanent standard governing Occupational Exposure to Asbestos (1910.1001). In general, most of the current requirements remain unaffected by the ETS. However, compliance with some requirements will be triggered by the new exposure limit of 0.5 f/cc instead of the former PEL of 2 f/cc. For example, requirements such as change rooms remain unaffected by the ETS and the trigger level for change rooms remains

STATE OF MINNESOTA

COUNTY OF RAMSEY

CERTIFICATE

In the Matter of the Proposed Adoption of
Rules Governing Insurance Agent Conduct

I certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minnesota Statutes, section 14.14, subd. 1, that their names be placed on file with and maintained by the Department of Commerce for the purpose of receiving notice of the proposed adoption of rules is accurate and complete as of 12:00 P.M., this 22nd day of November, 1983.

Debbi J. Lindlief

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A. Edward Hunter, Asst. Director
State Planning Agency
101 Capitol Square Building
St. Paul, MN 55101

Mary Stanton, Staff Assoc./Fin.
State University System
555 Park St., Suite 230
St. Paul, MN 55103

Gary Gandrud
Stolpestad, Brown & Smith
2000 North Central Tower
St. Paul, MN 55101

Robert E. Swift, Vice President
Title Insurance Company of MN
400 Second Avenue South
Minneapolis, MN 55401

Union Fidelity Life Insurance Co.
Union Fidelity Office Park
Trevose, PA 19049
Attn: Edward G. Farmer, Jr., V.P.

Jerome Scheibl, Vice President
Wausau Insurance Group
2000 Westwood Dr.
Wausau, WI 55401

Workers Comp. Reinsurance Assoc.
900 Minnesota Mutual Life Center
400 North Robert Street
St. Paul, MN 55101

John B. LaMacchia & Associates
Actuaries Management Consultants
12 North Central Avenue
St. Louis, MO 63105

Sam Ruhle
Office of Administrative Hearings
400 Summit Bank Building
Minneapolis, MN 55415

Joseph T. Justice, Counsel
Alexander Howden Group U.S. Inc.
P.O. Box 19539
Atlanta, GA 30325

Alliance of American Insurers
Attn: Debra G. Wozniak
1501 Woodfield Rd., Suite 400 West
Schaumberg, IL 60195

Willys P. Jones
Allison-Williams Co.
2300 IDS Center
Minneapolis, MN 55402

Mr. Robert J. Demichelis
American Council of Life Insurance
1850 K Street NW
Washington, DC 20006

Fred McGarvey
American Insurance Association
230 W. Monroe
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Morris J. Anderson, Exec. Dir.
Association of Minnesota Counties
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Carleton Financial Computations
P.O. Box 570
South Bend, IN 46624

John F. Sheski, Counsel
Central Life Assurance Company
P.O. Box 5620
Madison, WI 53705

The weather will cut a harvest already greatly diminished when farmers idled one-third of their corn land to participate in government farm programs.

American farmers can expect to harvest only half as much corn this fall as they did a year ago, the USDA said in its September crop forecast.

The government's forecast for the national soybean crop was reduced to two-thirds of last year's harvest.

In Minnesota and Wisconsin, the predicted crop loss due to the weather is much less severe than in the nation as a whole.



Donhowe



Nichols

The drought is so pervasive that the Agriculture Department now

nesota, said state Agriculture Commissioner Jim Nichols.

"Gus Donhowe has been coming to my office looking at the numbers, and he walks away smiling," Nichols said, referring to Minnesota's finance commissioner.

"Minnesota farmers will have grain to sell," Nichols said.

From field surveys conducted in late August, the Minnesota Agricultural Statistics Service forecasts a Minnesota corn harvest of 445.7 million bushels, a drop of 11 percent from a month ago, based

in other Midwest states, USDA projected a 48 percent reduction in the national harvest this year. The reduction is 50 percent in Illinois and Indiana, major corn states.

Corn yield projections are 102 bushels an acre in Minnesota, 100 bushels an acre in Wisconsin and 101 bushels an acre in Nebraska, where a lot of corn is raised under irrigation.

The department had predicted a 6.2 billion-bushel corn crop in June, then reduced the forecast to 5.3 billion bushels after surveying

crop and 23 precent
the 1981 harvest. Th
had forecast a 1.84
crop a month earlier.

The reduction in
Minnesota crop was
ate; with a yield de
bushels an acre to
acre. The projecte
crop is 142.6 million
9 percent from a mor
18 percent below la
vest, when farmers

See Cr

State proposes regulations for 40,000 insurance agents

By Bill Salisbury
Staff Writer

The state of Minnesota would start regulating the conduct of approximately 40,000 insurance agents under a set of rules proposed Monday by state Commerce Commissioner Michael Hatch.



Hatch

Hatch said he decided to propose state standards in response to public demand. His department has received numerous consumer complaints about insurance marketing methods, particularly those used to sell Medicare supplement insurance, he said.

"Insurance is the only industry under the jurisdiction of this department that does not have rules governing the conduct of its agents," the commissioner added. The Commerce Department regulates the conduct of agents in real estate, securities, banks, credit unions and collection agencies.

Most other states regulate insurance agents, Hatch said.

But the regulations proposed by Hatch would be the "most comprehensive in the country," said Ralph Marlatt, president of the Insurance Federation of Minnesota.

"We see the need for regulation, we want to see it work and we want to work with Hatch," Marlatt said. "But at this point, we think the proposed rules are a little excessive."

He said insurance industry leaders agreed with Hatch that there is a need to stop abuses of Medicare supplement policies, but he questioned whether the same type of regulation is needed for all types of insurance. The additional regulation will mean more paperwork for agents and probably higher costs for consumers, he warned.

The proposed regulations, authorized by a 1979 law, will take effect in about six

See Rules, Page 5A

Top o' the morning

Sunny side up

Twin Cities skies will be sunny by this afternoon, with a high in the 60s. Details on Page 6C.

Temperatures

1 a.m. . . . 56	9 a.m. . . 53	5 p.m. . . 63
2 a.m. . . . 55	10 a.m. . . 55	6 p.m. . . 63
3 a.m. . . . 54	11 a.m. . . 56	7 p.m. . . 61
4 a.m. . . . 53	Noon . . . 60	8 p.m. . . 58
5 a.m. . . . 52	1 p.m. . . 61	9 p.m. . . 55
6 a.m. . . . 51	2 p.m. . . 61	10 p.m. . . 55
7 a.m. . . . 51	3 p.m. . . 63	11 p.m. . . 52
8 a.m. . . . 52	4 p.m. . . 65	Midnight . 53

Index

Accent	3C	Horoscopes	6C
Arts/Ent.	5C	Latest Line	4B
Business	4B	Movies	5C
Classified	7C	Obituaries	2C
Comics	6C	Sports	1B
Crossword	11C	Stocks	8B
Deeb	11A	TV-Radio	11A
Editorials	10A	Walters	1B

135th Year, No. 139
3 Sections, 34 Pages

Telephones
News and General, 222-5011
Metro Circulation, 291-1888
Want Ads, 222-2844

Marines giv
power to ca
Beirut attac

From Wire Services

WASHINGTON — President Reagan
Marines in Beirut to call in air strikes
shelling their positions, serving notice
the United States is ready to escalate it
Lebanon, White House officials said Mon

The decision was made by top admini
utives and representatives of the Joint
in a series of meetings over the weekend
The strongest argument for additional m
they said, came in communications
McFarlane, Reagan's Middle East specia

His emphasis, officials said, was not
Marines must be given more protection
thority to call in their AV-8 Harrier fig
and Navy A-6 bombers from the carri
hower off Beirut, but also that the U.S
must demonstrate to Arab nations that
ally.

Among those involved in the week
were national security affairs adviser

See Mari

Durenberger asks EPA to widen acid rain plan

By Steven Dornfeld
Washington Correspondent

WASHINGTON — Sen. David Durenberger, R-Minn., advised the Reagan administration Monday that it will have difficulty selling a proposed plan that would attempt to curb acid rain only in the Northeast.

Durenberger said he told William Ruckelshaus, head of the Environmental Protection Agency, of nationwide support to reduce acid rain, noting that it not only threatens lakes in the Northeast, but also in other parts of the nation including northern Minnesota and Wisconsin.

The senator solicited the administration's support for his legislation to impose a new tax on utility and auto emissions as part of a comprehensive plan to reduce acid rain. These emissions are believed to be the major sources of the problem.

Until recently, the Reagan administration had argued that more research was needed before any action could be taken to control acid rain. However, administration officials now acknowledge that acid rain poses a real threat to the nation's lakes and they are exploring ways to reduce it.

Durenberger said that during their meeting Ruckelshaus still seemed to be leaning toward a plan to test acid rain controls in the states immediately around New York's Adirondack Mountains, where the problem appears to be particularly acute.

Durenberger said that if the administration gives the appearance of stonewalling on the issue, it could cause electoral problems next year for President Reagan and Republican senators in many regions of the country.

"The administration would be well advised to support the kind of concept I am advancing," he said.

Durenberger would impose a pollution tax to encourage utilities to reduce their sulfur emissions and to persuade automakers to build cleaner cars. The tax revenue would be used to help older, coal-burning power plants — the major source of acid rain — install new pollution control equipment.

Rules: New regulations limit sales

Continued from Page 1A

months, after public review and comment.

One of the key rules, Hatch said, would make it clear that insurance companies and agencies are responsible for their agents' conduct. "Now, it's easy for an agency or company to fire a bad agent, wash their hands of the problem and then go out and hire another agent who engages in the same kinds of illegal practices," he said.

Under a proposed rule, the department will discipline companies or agencies that fail to supervise agents, he said. Penalties for violators include suspension or revocation of insurance licenses and fines of up to $5,000.

A proposed suitability rule would require an agent to determine whether a customer needs or can afford the policy the agent is selling. "This is aimed at the classic cases where agents have sold 13 or 14 Medicare supplement policies to a senior citizen who doesn't need them," Hatch said.

Other proposed rules would require agents to:

- Keep records of all funds received for or from clients. Most agents keep such records, Hatch said, but some have mixed business and personal funds and can't account for the proceeds.
- Identify the person who sold a policy. This is aimed at limiting sales by unlicensed agents whose policyholder applications are brokered by another agent.
- Send monthly statements to any customers to whom they owe money and put loan agreements in writing. Hatch said the department has received complaints about agents who claimed payments they received from customers were loans to them.
- Deliver a copy of a policy to a customer within 20 days of receiving it. An agent also must give a client a receipt for any policies he takes from a client.

This is the second major set of rules that Hatch is attempting to impose on the insurance industry. Last month, he proposed regulating the way companies cancel auto insurance policies.

Hatch said he plans to unveil two

SALE
AMPLES OF SAVINGS STOREWIDE.
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such names as Vanity Fair, Olga,
in sizes 32-40.

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Entire stock of our own leather clutches. Reg. $18-$28. Only at Donaldsons. Select from a variety of all leather handbags in Nappa leather. Top zip or flap styles. Some with drop-in shoulder straps. Handbags.

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3.99
Bath towel. Dynasty irregulars by Burlington. Soft and plush velour towels in assorted colors. Hand towels 2.99. Wash cloths 1.99. Slight irregularities will not affect wear. Bath Shop.

• Identify the person who sold a policy. This is aimed at limiting sales by unlicensed agents whose policyholder applications are brokered by another agent.

• Send monthly statements to any customers to whom they owe money and put loan agreements in writing. Hatch said the department has received complaints about agents who claimed payments they received from customers were loans to them.

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This is the second major set of rules that Hatch is attempting to impose on the insurance industry. Last month, he proposed regulating the way companies cancel auto insurance policies.

Hatch said he plans to unveil two more sets of insurance rules. He plans to propose regulations for insurance advertising and marketing practices and to set standards for settling insurance claims.

Candidate: Alleges plot

Continued from Page 1A

to police reports.

Anderson, an independent, running against incumbent DF James Scheibel for the 2nd W City Council seat. Both candid will move on from today's prim election to the general elec Nov. 8.

In several telephone conv tions from jail Sunday and day, Anderson denied that she bed her husband and alleged he stabbed himself to imp her.

Anderson said that when arrived at her home at 1058 mit Ave. Saturday mornin asked them to take her husb a detoxification center. I they arrested her and left h band there.

On Monday, however, h band was taken to St. Paul-I Medical Center for treatu other medical problems. officials declined comme than to say that he was in condition in an intensive ca

Anderson said her arre DFL plot to discredit Council campaign. "Ever become a candidate, they jail," Anderson said.

heTravelers

The Travelers Companies
One Tower Square
Hartford, CT 06115

August 8, 1983

Mr. Dale McDonnell
Department of Commerce
500 Metro Square Building
St. Paul, Minnesota 55101

Dear Mr. McDonnell:

Proposed Regulations Concerning
Insurance Agents' Practices

We recently talked on the telephone in regard to the captioned regulations which are being drafted pursuant to the authority granted to the Commissioner by Section 60A - 17 (15) of the Minnesota Statutes.

I would appreciate your sending me a copy of the proposed regulations when they are completed.

Thank you.

Very truly yours

Robert S. Brooks
Contract Attorney
Government Affairs & Law Div

RSB:vbc

PROFESSIONAL INSURANCE AGENTS
400 N. WASHINGTON ST. • ALEXANDRIA,VA. 22314 • (703) 836-9340

August 26, 1983

Michael A. Hatch
Commissioner of Commerce
State of Minnesota
500 Metro Square Building
St. Paul, Minnesota 55101

Dear Commissioner Hatch:

Thank you for including us on comments to the proposed revision of your trade conduct rules.

We will review them this week and discuss our comments with our affiliate. I am sure you have forwarded a copy of this proposal to Clayton Cram of PIA of Minnesota. This will determine if, and the extent to which we will make a formal submission to Dale McDonnell.

Sinderely,

PATRICIA A. BOROWSKI, CPIW
Director of Administration
Government & Industry Affairs

PAB/n

cc: Clayton Cram, FMS
Executive Director and Manager
PIA of Minnesota
5350 West 78th Street
Minneapolis, Minnesota 55435

(612)835-4180

Sathre Abstracters Incorporated BOX 146 - BEMIDJI, MINNESOTA 56601

August 27, 1983

STATE OF MINNESOTA

AUG 30 1983

DEPARTMENT OF COMMERCE

Department of Commerce
Insurance Division
Attn: Mr. Dale McDonnell
500 Metro Square Building
St. Paul, Minn 55101

Dear Mr. McDonnell:

Please send me a copy of the proposed rules relating to Unfair Trade Practices. (CITE 7 S.R. 1802-1803).

I am an agent for real estate title insurance only and not an agent for general insurance. I am interested as to how the proposed regulations affect title insurance agents.

Since I last talked with you, I have become President of the Minnesota Land Title Association, and would like to pass on this information to our members.

Thank you,

Martin R. Sathre, President
Sathre Abstracters Incorporated
P. O. Box 146
Bemidji, Minn 56601-0146

1-218-751-4565

MRS/s

Martin Sather
PO BOX 146
Bemidji M 5660y

want copy

agency -
dir. - State Assoc.
of Addictions

CPCU
THE SOCIETY OF CHARTERED PROPERTY & CASUALTY UNDERWRITERS

CHAPTERGRAM
M-I-N-N-E-S-O-T-A

Minnesota Chapter,
Society of CPCU
7101 York Avenue So.,
Edina, MN 55435

August 22, 1983

Mr. Dale L. McDonnell
500 Metro Square Building
St. Paul, MN 55101

State of Minnesota
AUG 24 1983
Department of Commerce

Gentlemen:

We have received copies of the proposed draft of rules concerning insurance trade conduct. Thank you for including the Minnesota Chapter of the Society of CPCU in your request for contributions.

At the risk of redundance, The Society of CPCU conducts all its operations under the highest standards of professional conduct; for the sake of brevity and dispatch, a copy of our oath together with a description of our Society has been attached.

A committee formed by our Educational Department has taken the opportunity to review and discuss the proposed changes and additions. We have found the draft excellent in content and scope and do not feel we would have need to make any significant alterations or amendments to the instrument. We are of the opinion the entire document subscribes to the ideals we are dedicated to maintain and for this reason offer our endorsement and support for the proposal.

We will appreciate being kept up-to-date on developments concerning this draft of rules changes. Thank you again for calling on us.

Very truly yours,

S I Levitus

Stephen I. Levitus
President

SIL/dlm

CPCU
THE SOCIETY OF CHARTERED PROPERTY & CASUALTY UNDERWRITERS

CHAPTERGRAM
M-I-N-N-E-S-O-T-A

THE SOCIETY OF CHARTERED PROPERTY AND CASUALTY UNDERWRITERS

The Society of CPCU was founded in 1944 with six members--the first CPCU designees--and one chapter. Today, the Society has thousands of members, five regions and over one hundred chapters. Membership in the Society is limited to those men and women who have passed all of the examinations administered by The American Institute for Property and Liability Underwriters and have met all of the other requirements necessary for qualification as Chartered Property Casualty Underwriters. The purpose of the CPCU program is to create an ever-increasing group of skilled professionals in the property-liability insurance field, dedicated to the precepts of continuing education and professional ethics and practices.

THE MINNESOTA CHAPTER OF THE SOCIETY OF CHARTERED PROPERTY AND CASUALTY UNDERWRITERS

The Minnesota Chapter of CPCU was founded December 1, 1949, and has since grown to one of the largest chapters in the North Central Region.

CPCU PROFESSIONAL COMMITMENT

"As a Chartered Property Casualty Underwriter:

I shall strive at all times to live by the highest standards of professional conduct;

I shall strive to ascertain and understand the needs of others and place their interests above my own; and

I shall strive to maintain and uphold a standard of honor and integrity that will reflect credit on my profession and on the CPCU designation. "

8/4/83

(CONFIDENTIAL)

D R A F T

INSURANCE AGENT RULES

4 MCAR § _____ Definitions.

As used herein the following terms shall have the meanings ascribed to them.

A. "Agent" means an insurance agent licensed under Minn. Stat. § 60A.17.

B. "Brokerage business" means applications for insurance submitted to an insurer through a brokering agent, as provided in Minn. Stat. § 60A.17, subd. 3, by a soliciting agent who is not appointed by the insurer at the time the applications for insurance are solicited.

C. "Brokering agent" means a licensed and appointed agent of an insurer through whom an application for insurance is submitted to the insurer on behalf of a soliciting agent who was not appointed by that insurer at the time the application was solicited.

D. "Commissioner" means the Commissioner of the Minnesota Department of Commerce.

E. "Licensee" means an individual or an agency licensed under Minn. Stat. § 60A.17, subd. 1.

F. "Soliciting agent" means an agent who sells or attempts to sell insurance to a person.

G. "Supervising agent" means an agent or general agent who contracts with, employs, engages or associates with one or more other agents to solicit applications for insurance, or to otherwise

act as insurance agents on her/his behalf. In the case of an agency required to be licensed under Minn. Stat. § 60A.17, subd. 1, the supervising agent(s), if not specifically designated, shall be the licensed officer(s) of the corporate agency, or the partners of a partnership agency.

4 MCAR § _____ Loans from clients.

A. No agent shall solicit or accept a loan from an individual with whom the agent came into contact in the course of her/his business, unless the loan agreement or note is reduced to writing, the lender is provided with a fully-executed copy of the agreement or note at the time the loan is made, and the terms of the loan are otherwise lawful.

B. Notwithstanding paragraph A, above, no agent shall solicit or accept a loan under dishonest, unfair or unconscionable circumstances from an individual with whom the agent came into contact in the course of her/his business. In determining whether a particular loan was solicited or accepted under dishonest, unfair or unconscionable circumstances, the Commissioner will consider the following facts:

1. The prior relationship between the agent and the lender;
2. The lender's age, mental state and capacity;

3. The terms of the loan, including the amount, duration, and rate of interest, and the agent's compliance therewith;

4. Provisions for collateral or security;

5. The lender's income and net worth;

6. The involvement or lack of involvement of a family member of the lender, or some other neutral third party, in the negotiation of the loan;

7. Any prior history of unfair treatment of the lender which the agent knew or should have known about;

8. Indications of high pressure solicitation, coercion, intimidation or undue influence by the agent in securing the loan;

9. The agent's representations regarding the need for or intended use of the loan; and

10. Any other factors which reflect on whether the loan was unfair or unconscionable.

C. An agent who accepts or has an outstanding loan from an individual with whom she/he came into contact in the course of her/his business, must immediately compile and maintain for at least six (6) years after the loan has been fully repaid, a list of the individual(s) from whom she/he has borrowed money, together with all documentation relating to the loan(s) and the circumstances under which they were made.

4 MCAR § _____ Delivery of policies.

Policies, certificates, or other evidence of insurance which are received by an agent from an insurer for delivery to an insured must be delivered or mailed to the insured by the agent within ten (10) days of the agent's receipt thereof.

4 MCAR § _____ Receipts for insurance-related materials.

An agent who takes possession of an insured's or a potential insured's insurance policies, certificates, or other documents pertaining to existing or pending insurance, must leave a written receipt therefor at the time the agent receives the insurance-related materials. The receipt must contain an itemized list of the materials received, the agent's name, and the address and telephone number of her/his agency or other place where the agent can be contacted. The receipt must be dated and signed by the agent.

4 MCAR § _____ Signatures on applications.

Applications for insurance must bear the signature of the soliciting agent. In the case of brokerage business, applications must be signed by both the soliciting agent and the brokering agent.

4 MCAR § _____ Other licenses.

It is an untrustworthy practice within the meaning of Minn. Stat. § 60A.17, subd. 6 for an insurance agent to engage in any unfair, deceptive, dishonest, untrustworthy or fraudulent conduct which leads to the revocation of a license which the agent holds under Minn. Stat. chs. 80A or 82.

4 MCAR § _____. Criminal convictins; disciplinary actions in other states.

A. An agent who is convicted of a felony or gross misdemeanor, or a misdemeanor involving moral turpitude, must report the conviction to the Commissioner within ten (10) working days thereof.

B. An agent whose insurance, securites or real estate license is suspended or revoked in another state, or who has been ordered to pay a civil penalty because of her/his conduct in the insurance, securities or real estate industries in another state, must report the disciplinary action to the Commissioner within 10 working days of the effective date thereof.

4 MCAR §_____ Duties of supervising agents.

A. A supervising agent shall have the duty to ensure that her/his contracted, employed, engaged or associated agents:

1. Are properly licensed in the line(s) of insurance in which they do business;

2. Promptly remit all premiums, return premiums, refunds, claim settlements or other monies or things of value in the agents' possession obtained as a result of an insurance transaction and due and payable to any person, firm or insurer; and

3. Comply with applicable laws and rules of the Department of Commerce.

B. A supervising agent must establish, maintain and enforce written procedures which will ensure proper supervision of the activities of each agent and compliance with applicable insurance laws and regulations.

C. Every supervising agent must at least annually conduct an examination of the client accounts of every agent within her/his employ, contract or association, and maintain records required by these rules.

4 MCAR § _____ Suitability.

In recommending the purchase of any insurance to a customer, an agent must have reasonable grounds for believing that the recommendation is suitable for the customer, and must make reasonable inquiries to determine suitability. The suitability of a recommended purchase of insurance will be determined by reference to the totality of the particular customer's circumstances, including, but not limited to: the customer's income; the customer's need for insurance; and the values, benefits and costs of the customer's

existing insurance program, if any, when compared to the values, benefits and costs of the recommended policy or policies.

4 MCAR § _____ High standards of commercial honor.

Every agent must observe high standards of commercial honor and just and equitable principles of trade in the conduct of her/his business.

4 MCAR § _____ Registered office for resident agents.

Every agent who is licensed as a resident agent must maintain a registered office for service of process in this state. The address of the office must be specified on all license applications and renewal applications.

4 MCAR § _____ License display and use.

A. Every licensee must prominently display her/his license(s) in her/his office in a place where it can readily be viewed and inspected.

B. Any written or oral advertisement or representation, which refers to licensing used by a licensee, must contain a disclaimer that the reference to licensing is not an endorsement, sponsorship or implied endorsement or sponsorship of the licensee or its products, by the State of Minnesota, the Department of Commerce or any other state agency.

4 MCAR § _____ Receipt of client funds.

A. An agent who receives funds from a client in connection with an insurance transaction receives and holds those funds in a fiduciary capacity.

B. An agent holding funds of a client must, each month, provide to the client an itemized statement showing the location and amount of money held.

4 MCAR § _____ Mandatory financial records of agents and agencies.

A. Every agent and agency must keep a record of all funds received for or from clients, including cash, notes, savings certificates, uncashed or uncollected checks, or other similar instruments. The records must set forth the date funds were received, from whom received, the amount received, the date of deposit of the funds into the business account of the agent or agency, and the monthly balance of the account in which the funds are deposited. Each agent and agency must maintain a cash receipts journal and a cash disbursements journal, or similar records, in accordance with generally accepted accounting principles.

B. Each agent and agency must keep a separate record for each client or transaction, accounting for all funds therein which have been deposited in the agent's business account. These records must set forth the information sufficient to identify the transaction and the parties thereto. At a minimum, each such record must set forth:

1. the date funds are deposited;

2. the amount deposited

3. the date of each related disbursement;

4. the check number of each related disbursement;

5. the amount of each related disbursement

6. a description of each disbursement;

C. All records and funds must be available for examination by the Commissioner or her/his designee in accordance with Minn. Stat. § 60A.031.

4 MCAR § ____ Mandatory complaint records.

Every agent and agency must compile and maintain a separate complaint file for each agent. The file must contain all written notes, reports, correspondence or other documents made or received by an agent or agency, relating to customer grievances or allegations that an agent, agency or person associated with an agent or agency is engaged in any unfair, false, misleading, dishonest, fraudulent, untrustworthy, coercive or financially irresponsible practice, or has violated any insurance law or rule promulgated thereunder. The agent or agencies must maintain the records for at least six years after the date of the complaint.

4 MCAR § _____ Termination of appointments or contracts.

An insurer or agency which terminates an agent's appointment, contract or association with an agent based entirely or in part on a complaint or alleged violation of law, including but not limited to

the failure to remit premiums, must, within ten(10) working days of the termination, forward to the Commissioner a written statement of the reason for the termination. The statement must include the names, addresses and, if available, telephone numbers of all persons having knowledge of the matter; the originals of any applications, checks or other documents relating to the complaint or alleged violation which are in the insurer or agency's possession or control; copies of all statements or affidavits taken from any person in connection with the complaint or allegations; and a current statement of the agent's account with the insurer or agency.

4 MCAR § _____. Refunds.

An agent who receives a request for cancellation of a policy pursuant to Minn. Stat. §§ 62A.38, 72A.51 or 72A.52 must make the refund or initiate the refund with the insurer, within ten (10) days of the agent's receipt of the request. An agent who receives a refund from an insurer for the account of, or for delivery to an insured or former insured, must deliver or mail the refund, or cause it to be delivered or mailed to the insured or former insured within five (5) days of receipt.

4 MCAR § _____ Penalties.

Violations of these rules subject the violator to the penalties described in Minn. Stat. § 60A.17, subd. 6c.



MINNESOTA ASSOCIATION OF LIFE UNDERWRITERS

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C. Wayne LeNeave, CLU
North American Life Assurance — 612/835-1515
5601 Green Valley Drive
Minneapolis, Minnesota 55437
EXECUTIVE DIRECTOR
Rhoda S. Toles
1111 Douglas Drive North — 612/544-8087
Minneapolis, Minnesota 55422

AREA DIRECTORS
REGION No. 1
Arrowhead & Northern
John W. Yount
Central Life Assurance — 218/727-6881
301 First Federal Savings Building
Duluth, Minnesota 55802
REGION No. 2
Northwestern, Glacial Ridge & West Central
Myron O. Larson
Myron Larson Insurance — 612/763-6916
413 Broadway P.O. Box 595
Alexandria, Minnesota 56308
REGION No. 3
Central, North Metro, & Paul Bunyan
Roger A. Hubley, ChFC, CLU
Indianapolis Life — 612/427-7440
P.O. Box 608
Anoka, Minnesota 55303
REGION No. 4
Minnesota Valley, Southern & Southwestern
Neil P. Kittlesen, CLU
Lutheran Brotherhood — 507/387-5666
Northwestern Office Building #307
Mankato, Minnesota 56001
REGION No. 5
Albert Lea/Austin, South Metro & Tri County
Kurt R. Baldry
Aid Association for Lutherans — 612/477-6004
P.O. Box 535
Prior Lake, Minnesota 55372
REGION No. 6
Hiawatha Valley, Rochester & Winona
Robert A. Willmarth
Mutual Service Insurance — 507/285-0990
P.O. Box 6537
Rochester, Minnesota 55903
REGION No. 7
St. Paul
Richard A. Larson, ChFC, CLU
Bankers Life of Iowa — 612/227-7717
142 Metro Square Building
St. Paul, Minnesota 55101
REGION No. 8
Minneapolis
Charles E. Garrity, CLU
North American Life Assurance — 612/941-7006
9977 Valley View Road #220
Eden Prairie, Minnesota 55344

August 31, 1983

Michael A. Hatch
Commissioner of Commerce
Department of Commerce
500 Metro Square Building
St. Paul, Minnesota 55101

Dear Commissioner Hatch:

The Minnesota Association of Life Underwriters has had an opportunity to review your proposed rules relating to insurance agent conduct and would like to commend you and your staff for the time and effort involved in their production. For the most part, MALU concurs with the proposed rules and would encourage their diligent enforcement.

It is our understanding that the major impetus for the promulgation of these rules was the investigation of fraud and abuse that has occurred in the medicare supplemental insurance field. It is apparent in reviewing the proposed rules that many portions of the rules are designed to address the sale of this particular product. We would suggest that portions of the rules aimed at medicare supplemental abuses should perhaps deal with that type of insurance specifically and not be applicable to all lines of insurance.

We would like to offer the following specific comments for your consideration. There was some concern expressed by our members over the use of the term "brokering agent" since in Minnesota we do not have "licensed brokers". This may just be a matter of semantics that could be cleared up by the use of another term. However, we do not wish to see established by these rules a brokers license or class of identification.

We feel that the portion of the rules attempting to regulate client loans to agents are not related to the sale of insurance or its regulation and therefore should be stricken from the proposed rules. It perhaps would be more appropriate to state under what circumstances an agent can accept money from a client.

We are very much opposed to item C, page 6, which relates to the duties of a supervising agent. First of all, requiring a supervising agent to annually examine all agent accounts, life, health, property and casualty - literally thousands of accounts, would be extremely cumbersome to administer as well as enforce. There is also the question of whether a supervising agent would have access to client accounts for insurance written with other insurers. Many independent agents are obviously reluctant to share with various company officials information on policyholders of other companies. It is MALU's opinion that if the preceding item B, the establishment, maintenance and enforcement of written procedures that ensure proper supervision of the activities of each agent and compliance with insurance laws and regulations, is properly administered there is no need for an annual examination.

We would like to suggest that you incorporate in your agent conduct rules a practice that is not addressed in the present draft but is one that MALU feels very strongly about. This practice is commonly referred to as the credit tie-in and relates to insurance written by lending institutions. We would strongly recommend that you make it an illegal or fraudulent insurance practice for an agent to coerce an individual to purchase insurance in conjunction with a loan or application for a loan from a lending institution.

I would hope that you would give these recommendations and comments your serious consideration. If you wish, I would be happy to meet with you at your convenience to discuss these recommendations and comments in greater detail.

Yours very truly,

Dominic J. Sposeto

Dominic J. Sposeto
Governmental Relations Consultant

Photocc: Gene H. Storms, CLU
Samuel P. Cleveland, CLU
Rhoda Toles
Dale McDonnell

TRADE CONDUCT - AGENT CONDUCT

Requests for Rules

		Req.	Sent
Rep. Phyllis Kahn	234 SOB, Attn. Sarah Meyer	12-16-83	12-19-83
Keith Loveland	5720 Green Circle Dr., Minnetonka		12-19-83
Constance DesVernine	INA - Aetna, Box 1190, MPLS, 55440		12-19-83
Richard B. Allyn, Esq.	Robins, Zelle, Larson + Kaplan 33 S. 5th St, MPLS 55402	11-1-83	12-19-83
Peter DeVine		12-21-83	12-21-83
Kirby Dohl	P.O. Box 417, Cold Spring, MN 56320		
Mid-America Mutual Life	2021 E. Hennepin Ave, MPLS 55413	2-17-84	2-23-84
William Peterson	P.O. Box 185, Mora, 55051	2-21-84	2-23-84
Gary Winset	1519 Grantham, St. Paul, MN 55108	2-23-84	2-24-84
Michael S. Skaran	4721 15th Ave., NW, Rochester, MN 55901	2-27-84	2-29-84
Eric Christiansen	6701 Penn Ave. S., Richfield, MN 55423	2-29-84	3-1-84
John W. Palan	The Insurance Depot of Faribault 411 NW 4th St., P.O. Box 839 Faribault, MN 55021	3-1-84	3-2-84
Denise Reuter	7574 W. 147th, P.O. Box 24329 Apple Valley, MN 55124	3-2-84	3-2-84

STATE OF MINNESOTA

SF-00008-03

OFFICE INFORMATION MEMO

DATE	TIME

TO

LOCATION

FROM

LOCATION

PHONE NO.

( )

12-6

MESSAGE TAKEN BY

☐ Called ☐ Please call ☐ Was here to see you
☐ Urgent ☐ Will call again ☐ Returned your call

ACTION

☐ As we discussed ☐ For your information ☐ Take appropriate action
☐ As you requested ☐ For your approval ☐ Prepare reply for my sig.
☐ Review and see me ☐ For signature ☐ Reply and send me copy
☐ Review and return ☐ Notify staff ☐ File ☐ Dispose

PHOTOCOPY

☐ One side only ☐ Collate
_____ No. of copies ☐ Head to head ☐ Staple
_____ Date needed ☐ Head to foot ☐ Other _____

TYPING

☐ Rough draft ☐ Final copy
☐ Single space ☐ Memo
_____ ☐ Double space ☐ Letterhead
Date needed ☐ Rush ☐ Carbons

REMARKS/MESSAGES

Joan, Legal Dept.
Chicago Title Ins. Co.
4820 W. 77th St.
Edina, MN 55435

Agent Conduct

☐ Over

J.T. MILLER COMPANY
1000 CURRIE AVENUE • MINNEAPOLIS, MN 55403 • (612) 338-0111

November 23, 1983

Debbi Lindleif
Department of Commerce
500 Metro Square Building
St. Paul, MN 55101

Dear Ms. Lindlief:

Please forward a copy of the final rules as proposed for adoption in the matter of the Proposed Adoption of Rules Relating to Insurance Agent Conduct per your latest communication. Thank you.

Sincerely,

J. T. MILLER COMPANY

J T Miller

Jerrold T. Miller

JTM:dlz

Sent 11-30

September 19, 1983

Jim Faber
154 Ruth Street
St. Paul, Minnesota 55119

Dear Mr. Faber:

Please find enclosed as you requested a copy of the proposed rules relating to insurance agent conduct. Many of the requirements of these rules arose from abuses discovered while investigating agents who sold medicare supplement insurance.

If you have any questions or comments on these rules feel free to contact Dick Gomsrud (296-5689) or myself.

Sincerely,

MICHAEL A. HATCH
Commissioner of Commerce

By:

DALE L. MCDONNELL
Insurance Analyst
(612) 297-3301

da
Enclosure

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
ST. PAUL 55101

OFFICE OF THE COMMISSIONER

September 20, 1983

Janet Jacobson
Rider, Bennett, Egan & Arundel
2500 First Bank Place West
Minneapolis, Minnesota 55402

Dear Ms. Jacobson:

Please find enclosed as you requested a copy of proposed rules relating to insurance agent conduct.

If you have any questions feel free to contact Dick Gomsrud (296-5689) or myself.

Very truly yours,

MICHAEL A. HATCH
Commissioner, Department of Commerce

By:

DALE L. MCDONNELL
Insurance Analyst
(612) 297-3301

da
Enclosure

AN EQUAL OPPORTUNITY EMPLOYER

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
ST. PAUL 55101

500 METRO SQUARE BUILDING
ST. PAUL, MN 55101

PHONE_____

OFFICE OF THE COMMISSIONER

September 15, 1983

John Knapp
Hessian, McKasy & Soderberg, P.A.
1600 Midwest Plaza W. Bldg.
Minneapolis, MN 55402

Dear John:

As you requested please find enclosed a draft of the insurance agent practices rules.

Sincerely,

Dale L. McDonnell

ba

AN EQUAL OPPORTUNITY EMPLOYER

SF-00006-02

STATE MINNESOTA

DEPARTMENT of COMMERCE

Office Memorandum

TO : PAUL MARINAC
Revisor of Statutes

DATE: August 26, 1983

FROM : DALE L. MCDONNELL
Insurance Analyst

PHONE: 297-3301

SUBJECT: Proposed Rules Governing Insurance Agent Practices

Attached for your review are proposed new rules governing insurance agent practices. These rules are to be adopted as permanent rules.

If you have any questions feel free to call.

da

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
ST. PAUL 55101

500 METRO SQUARE BUILDING
ST. PAUL, MN 55101
PHONE 297-3301

OFFICE OF THE COMMISSIONER

August 12, 1983

Mr. Dominic Sposeto
3916 Chowen Avenue South
Minneapolis, MN. 55410

Dear Mr. Sposeto:

Enclosed please find a proposed draft of rules concerning insurance trade conduct. We will be publishing these rules for adoption in the near future and would like to receive your input before any final changes are made prior to publication.

I would appreciate receiving your written comments by August 26. All written input should be directed to Dale L. McDonnell at the above address.

Very truly yours,

Michael A. Hatch
Commissioner of Commerce

MAH:nl

P. S. There are three sets of rules being promulgated concerning insurance trade conduct: Part I - Insurance Marketing, Part II - Agent Conduct, Part III - Claim Settlements. Enclosed is Part II regarding Agent Conduct.

M.A.H.

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
ST. PAUL 55101

500 METRO SQUARE BUILDING
ST. PAUL, MN 55101

PHONE_____

OFFICE OF THE COMMISSIONER

August 12, 1983

Mr. Clayten Cram
Professional Insurance Agents Association
5350 W. 78th St.
Minneapolis, MN 55435

Dear Mr. Cram: Cly

Enclosed please find a proposed draft of rules concerning insurance trade conduct. We will be publishing these rules for adoption in the near future and would like to receive your input before any final changes are made prior to publication.

I would appreciate receiving your written comments by August 26. All written input should be directed to Dale L. McDonnell at the above address.

Very truly yours,

Michael A. Hatch
Commissioner of Commerce

MAH:ma

Enclosure

P.S. There are three sets of rules being promulgated concerning insurance trade conduct: Part I - Insurance Marketing, Part II - Agent Conduct, Part III - Claim Settlements. Enclosed is Part II regarding Agent Conduct.

M.A.H.

AN EQUAL OPPORTUNITY EMPLOYER

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
ST. PAUL 55101

500 METRO SQUARE BUILDING
ST. PAUL, MN 55101

PHONE_____

OFFICE OF THE COMMISSIONER

August 12, 1983

Ms. Rhoda Toles
Minnesota Association of Life Underwriters
1111 Douglas Dr.
Minneapolis, MN 55422

Dear Ms. Toles:

Enclosed please find a proposed draft of rules concerning insurance trade conduct. We will be publishing these rules for adoption in the near future and would like to receive your input before any final changes are made prior to publication.

I would appreciate receiving your written comments by August 26. All written input should be directed to Dale L. McDonnell at the above address.

Very truly yours,

Michael A. Hatch
Commissioner of Commerce

MAH:ma

Enclosure

P.S. There are three sets of rules being promulgated concerning insurance trade conduct: Part I - Insurance Marketing, Part II - Agent Conduct, Part III - Claim Settlements. Enclosed is Part II regarding Agent Conduct.

M.A.H.

AN EQUAL OPPORTUNITY EMPLOYER

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
ST. PAUL 55101

500 METRO SQUARE BUILDING
ST. PAUL, MN 55101

PHONE_____

OFFICE OF THE COMMISSIONER

August 12, 1983

Mr. James Anderson
Independent Insurance Agents of Minnesota
4900 Viking Dr.
Edina, MN 55435

Dear Mr. Anderson:

Enclosed please find a proposed draft of rules concerning insurance trade conduct. We will be publishing these rules for adoption in the near future and would like to receive your input before any final changes are made prior to publication.

I would appreciate receiving your written comments by August 26. All written input should be directed to Dale L. McDonnell at the above address.

Very truly yours,

Michael A. Hatch
Commissioner of Commerce

MAH:ma

Enclosure

P.S. There are three sets of rules being promulgated concerning insurance trade conduct: Part I - Insurance Marketing, Part II - Agent Conduct, Part III - Claim Settlements. Enclosed is Part II regarding Agent Conduct.

M.A.H.

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
ST. PAUL 55101

500 METRO SQUARE BUILDING
ST. PAUL, MN 55101

PHONE_____

OFFICE OF THE COMMISSIONER

August 12, 1983

Mr. Larry A. Becking
Minnesota Association of Health Underwriters
Transamerica Occidental
6550 York Ave. S. - Suite 102
Minneapolis, MN 55435

Dear Mr. Becking:

Enclosed please find a proposed draft of rules concerning insurance trade conduct. We will be publishing these rules for adoption in the near future and would like to receive your input before any final changes are made prior to publication.

I would appreciate receiving your written comments by August 26. All written input should be directed to Dale L. McDonnell at the above address.

Very truly yours,

Michael A. Hatch
Commissioner of Commerce

MAH:ma

Enclosure

P.S. There are three sets of rules being promulgated concerning insurance trade conduct: Part I - Insurance Marketing, Part II - Agent Conduct, Part III - Claim Settlements. Enclosed is Part II regarding Agent Conduct.

M.A.H.

AN EQUAL OPPORTUNITY EMPLOYER

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
ST. PAUL 55101

500 METRO SQUARE BUILDING
ST. PAUL, MN 55101

PHONE_____

OFFICE OF THE COMMISSIONER

August 12, 1983

Mr. Ralph Marlatt
Insurance Federation of Minnesota
1310 Pioneer Building
St. Paul, MN 55101

Dear Mr. Marlatt:

Enclosed please find a proposed draft of rules concerning insurance trade conduct. We will be publishing these rules for adoption in the near future and would like to receive your input before any final changes are made prior to publication.

I would appreciate receiving your written comments by August 26. All written input should be directed to Dale L. McDonnell at the above address.

Very truly yours,

Michaerl A. Hatch
Commissioner of Commerce

MAH:ma

Enclosure

P. S. There are three sets of rules being promulgated concerning insurance trade conduct: Part I - Insurance Marketing, Part II - Agent Conduct, Part III - Claim Settlements. Enclosed is Part II regarding Agent Conduct.

M.A.H.

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
ST. PAUL 55101

500 METRO SQUARE BUILDING
ST. PAUL, MN 55101

PHONE

OFFICE OF THE COMMISSIONER

August 12, 1983

Society of CPCU
7101 York Ave. S. - Suite 57
Edina, Minnesota 55435

Gentlemen:

Enclosed please find a proposed draft of rules concerning insurance trade conduct. We will be publishing these rules for adoption in the near future and would like to receive your input before any final changes are made prior to publication.

I would appreciate receiving your written comments by August 26. All written input should be directed to Dale L. McDonnell at the above address.

Very truly yours,

Michael A. Hatch
Commissioner of Commerce

MAH:ma

Enclosure

P.S. There are three sets of rules being promulgated concerning insurance trade conduct: Part I - Insurance Marketing, Part II - Agent Conduct, Part III - Claim Settlements. Enclosed is Part II regarding Agent Conduct.

M. A. H.

IIAM

YOUR Independent Insurance AGENT SERVES YOU FIRST

Independent Insurance Agents of Minnesota

4900 Viking Drive . . . Minneapolis, Minnesota 55435 . . . (612) 835-2494

September 16, 1983

Mr. Michael Hatch
Commissioner of Commerce
500 Metro Square Building
St. Paul, MN. 55101

Dear Mike,

Enclosed is a resolution recently adopted by our Board of Directors concerning your proposed rules and regulations and a news release dated today.

Sincerely,

James P. Anderson
Executive Vice President & Treasurer

Encl.

Harold Rushton, *President*
6133 Blue Circle Drive, Minnetonka 55343

Michael Donohoe, *Vice President*
P. O. Box 1146, Mankato 56001

James P. Anderson, *Exec. Vice Pres. & Treas.*
4900 Viking Drive, Minneapolis 55435

Thomas B. Caswell, Jr., *State National Director*
6800 France Avenue South, Minneapolis 55435

James A. Peterson, *Executive Assistant*
4900 Viking Drive, Minneapolis 55435

— BOARD OF DIRECTORS —

David Enquist, *Imm. Past Pres.*
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P. O. Box 285, Brainerd 56401

Rodger Lehr
P. O. Box 882, Litchfield 55355

Milt Netzer
P. O. Box 329, Ely 55731

Dennis Poppenhagen
855 Highway 10 E., Detroit Lakes 56501

Dan Schneeman
380 E. Lafayette Frontage Rd., St. Paul 55107

Rollie Seltz
220 Pioneer Building, St. Paul 55101

Mike Tate

IIAM

YOUR Independent Insurance AGENT SERVES YOU FIRST

Independent Insurance Agents of Minnesota

4900 Viking Drive . . . Minneapolis, Minnesota 55435 . . . (612) 835-2494

RESOLUTION

WHEREAS, existing insurance rules deal extensively with insurance marketing and the conduct of insurance agents

WHEREAS, this Association has been and continues to be in favor of regulations of insurance to enure to the benefit of the insurance buying public -- and

WHEREAS, there may be some specific areas in which current rules and regulations are deficient

NOW, THEREFORE BE IT RESOLVED that this Association has serious misgivings about the magnitude of the Commissioner of Commerce's proposed regulations and seeks through public hearing and discussion with the Commissioner of Commerce identification of those areas of the present insurance regulations which may be deficient.

Harold Rushton, *President*
6133 Blue Circle Drive, Minnetonka 55343

Michael Donohoe, *Vice President*
P. O. Box 1146, Mankato 56001

James P. Anderson, *Exec. Vice Pres. & Treas.*
4900 Viking Drive, Minneapolis 55435

Thomas B. Caswell, Jr., *State National Director*
6800 France Avenue South, Minneapolis 55435

James A. Peterson, *Executive Assistant*
4900 Viking Drive, Minneapolis 55435

John T. Lyons, CPCU, *Education Director*

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P. O. Box 329, Ely 55731

Pat O'Neill

Dennis Poppenhagen
855 Highway 10 E., Detroit Lakes 56501

Dan Schneeman
380 E. Lafayette Frontage Rd., St. Paul 55107

Rollie Seltz
220 Pioneer Building, St. Paul 55101

Mike Tate

IIAM

YOUR Independent Insurance AGENT SERVES YOU FIRST

Independent Insurance Agents of Minnesota

4900 Viking Drive . . . Minneapolis, Minnesota 55435 . . . (612) 835-2494

FOR IMMEDIATE RELEASE
SEPTEMBER 16, 1983

NEW RELEASE

THE BOARD OF DIRECTORS OF THE INDEPENDENT INSURANCE AGENTS OF MINNESOTA AT THEIR RECENTLY CONCLUDED QUARTERLY BOARD MEETING EXTENSIVELY DISCUSSED THE RECENTLY ANNOUNCED PROPOSED RULES AND REGULATIONS ISSUED BY MICHAEL HATCH, COMMISSIONER OF COMMERCE PERTAINING TO INSURANCE AGENTS LICENSED IN THE STATE OF MINNESOTA.

THE BOARD REITERATED THE ASSOCIATIONS CONTINUED SUPPORT OF REGULATIONS OF INSURANCE, BENEFITING THE INSURANCE BUYING PUBLIC AND ACKNOWLEDGING THAT THERE MAY BE SOME SPECIFIC AREAS IN THE CURRENT RULES AND REGULATIONS THAT ARE DEFICIENT. THE ASSOCIATIONS BOARD HAS, HOWEVER, SERIOUS MISGIVINGS ABOUT THE MAGNITUDE OF THE COMMISSIONERS PROPOSED REGULATIONS AS BEING BROAD IN SCOPE AND HAS REQUESTED THAT THE COMMISSIONER DISCUSS WITH REPRESENTATIVES OF THE ASSOCIATION THOSE AREAS OF THE PRESENT INSURANCE REGULATIONS WHICH MAY BE DEFICIENT AND CONDUCT PUBLIC HEARINGS.

INDEPENDENT INSURANCE AGENTS OF MINNESOTA WITH HEADQUARTERS IN MINNEAPOLIS REPRESENTS 1,600 INDIVIDUAL LICENSED AGENTS THROUGHOUT THE STATE OF MINNESOTA.

Harold Rushton, *President*
6133 Blue Circle Drive, Minnetonka 55343

Michael Donohoe, *Vice President*
P. O. Box 1146, Mankato 56001

James P. Anderson, *Exec. Vice Pres. & Treas.*
4900 Viking Drive, Minneapolis 55435

Thomas B. Caswell, Jr., *State National Director*
6800 France Avenue South, Minneapolis 55435

James A. Peterson, *Executive Assistant*
4900 Viking Drive, Minneapolis 55435

– BOARD OF DIRECTORS –

David Enquist, *Imm. Past Pres.*
P. O. Box 849, Rochester 55903

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P. O. Box 882, Litchfield 55355

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P. O. Box 329, Ely 55731

Dennis Poppenhagen
855 Highway 10 E., Detroit Lakes 56501

Dan Schneeman
380 E. Lafayette Frontage Rd., St. Paul 55107

Rollie Seltz
220 Pioneer Building, St. Paul 55101

Insurance Federation of Minnesota
1310 Pioneer Building
St. Paul, MN 55101
(612) 292-1099

October 18, 1983

Honorable Mike Hatch
Commissioner of Commerce
5th Floor - Metro Square Bldg.
Seventh & Robert Street
St. Paul, Minnesota 55101

RE: Proposed Rules Governing Agent Conduct

Dear Commissioner Hatch:

The full Legislative Committee of the Insurance Federation discussed the draft of the above proposed rules dated September 26, 1983.

We appreciate your considering our written comments to you on an earlier draft of these rules. The full Legislative Committee, although continuing to support the changes proposed to you in our letter dated September 1, 1983, concluded that one change must be made to prevent active participation in the rulemaking process.

That concern relates to the proposed 4MCAR Section 1.9020 regarding suitability and the likelihood of numerous private causes of action being filed based on this rule. Our concern is that with the broad, general wording of this proposed rule that a multitude of situations would arise where individuals would allege that their coverage, for whatever reason, was not suitable. We understand this section is intended as a tool more for agent disciplinary proceedings.

Consistent with these thoughts we propose the addition of the following words at the end of this proposed section:

> "This rule applies only to agent disciplinary actions by the Commissioner and does not give rise to any private right of action."

Thank you for considering our comments.

Sincerely,

Ralph J. Marlatt
President

RJM:KAS

CPCU
THE SOCIETY OF CHARTERED PROPERTY & CASUALTY UNDERWRITERS

CHAPTERGRAM
M-I-N-N-E-S-O-T-A

November 18, 1983

State of Minnesota
NOV 30 1983
Department of Commerce

State of Minnesota
Department of Commerce
ATTN: Dale McDonnell
500 Metro Building
St. Paul, Minnesota 55101

Dear Mr. McDonnell;

This letter is in response to the Minnesota Chapter of the Society of CPCU's review of the 2nd edition draft of "Proposed Insurance Agent's Rules" that was sent to us under cover letter dated September 6, 1983.

As you probably know, the Minnesota Chapter is made up of people holding the CPCU designation. We function primarily as an alumni association of those people; with the common bond and general goal of promoting education and professionalism in the Property & Casualty insurance industry. As such, the makeup of our organization is comprised of individuals working in many different aspects of our common industry. We have, as members; claims people, underwriters, managers, risk managers and agents of all types.

While we cannot endorse any specific regulations, we do want to go on record as an organization that supports, encourages and promotes professionalism in the insurance industry.

However, the consensus of the Executive Committee of the Minnesota Chapter is that much of the conduct attempting to be regulated through the "Proposed Insurance Agent's Rules" appears to be directed to practices which have received considerable publicity in recent years; but was conduct emanating primarily from the Life and Accident & Health insurance industry rather than the Property & Casualty industry.

Further, the Executive Committee is reticent about making specific recommendations as to the substantive content of any of the sections of your proposed rules due to our lack of understanding of how this might impact upon all of the diverse interest groups within our membership. Rather, it is our thought that the various other associations representing these interest groups, are in a better position to comment about specific provisions of each individual proposed regulation.

Again, we hope we have helped in this endeavor and would appreciate being kept up to date on any further developments.

Sincerely,

Stephen I. Levitus, CPCU
President
Minnesota Chapter CPCU

St. Paul Fire and Marine Insurance Company
385 Washington Street, St. Paul, Minnesota 55102
Telephone (612) 221 7911

Property & Liability
Insurance

July 14, 1983

Mr. Dale McDonnell
Department of Commerce
500 Metro Square Building
St. Paul, MN 55101

JUL 18 1983

Department of Commerce

Dear Mr. McDonnell:

I have read the notice from Mr. O'Malley that you plan to promulgate new rules governing the practices of insurance agents.

Although I have no immediate input to your study I am volunteering to your agency our services if you would like assistance in this process.

Yours truly,

Jerry W. Haug
Senior Marketing Officer
Marketing Division

JWH:ms

NATIONAL ASSOCIATION
NAHU
OF HEALTH UNDERWRITERS

MINNESOTA ASSOCIATION OF
HEALTH UNDERWRITERS

1983-84
EXECUTIVE COMMITTEE

OFFICERS

President
DAVID SULTAN, CLU, RHU, ChFC
Sultan Agency
1301 E. 79th Street
Bloomington, MN 55420
854-6312

President Elect
DAVID D. LeCLAIR, RHU
LeClair Agency, Inc.
315 Empire Bldg.
St. Paul, MN 55101
222-4776

Vice President
PAULA S. BURWELL
Fred S. James & Co., Suite 314
2901 Metro Drive
Minneapolis, MN 55420
854-1711

Secretary
JOHN A. LINNGREN, RHU
151 Silver Lake Road
New Brighton, MN 55112
633-7080

Treasurer
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Blue Cross/Blue Shield of Minn.
3535 Blue Cross Road
St. Paul, MN 55164
456-8301

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Minneapolis, MN 55435
920-0660

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Old Northwest Company
4901 W. 77th Street, Suite 140
Minneapolis, MN 55435
835-2143

ARTHUR L. GAYMAN, RHU
Minnesota Protective Life
7901 Flying Cloud Drive
Eden Prairie, MN 55344
944-3900

TODD GUBERMAN
Mutual of Omaha
871 Jefferson Ave.
St. Paul, MN 55102
291-0101

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920-0660

PHILIP J. KENNEY, CLU
Maguire Agency, Inc.
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St. Paul, MN 55164
645-5751

HARRY W. SCHROETTER, RHU
North American Life & Casualty
1115 Southview Boulevard
South St. Paul, MN 55075
451-2248

DENNIS R. STOLP, RHU
North Star Consultants, Inc.
The Carriage House
2222 Park Ave.
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August 25, 1983

STATE OF MINNESOTA
AUG 26 1983
DEPARTMENT OF COMMERCE

Mr. Dale L. McDonnell
State of Minnesota
Department of Commerce
500 Metro Square Building
St. Paul, MN 55101

Dear Mr. McDonnell:

This letter is in response to Commissioner Hatch's request for written comments on the proposed rules concerning insurance trade conduct. My comments below specifically refer to Part II (Agent Conduct) of the draft document.

In general I feel that the proposed rules attempt to address abuses that to my knowledge do not exist overall, but may exist, or have existed, in a specific situation, such as the marketing of medicare supplements to senior citizens. For this reason, I would prefer seeing the rules being made to apply to a specific situation, rather than to every situation. However, since my perspective is admittedly limited, I will attempt to address the draft as it is written and as it applies to the typical situation in my own experience.

Section 4 (A, B, C and D): What abuse this section attempts to correct is unclear to me. Many life and health sales are made to friends and relatives, and any loans in this case would appear to me to be a private matter. Also, as part A is worded, every single individual with whom the agent comes into contact would be included, since everyone is a prospect. Nor do the rules specify any time limitation on previous client contact.

Section 4 (Delivery of policies): Agents are anxious to deliver policies because in many cases commissions aren't payable until they do. However, ten days is much too short of a period to expect this to be done in many, if not most, cases. Clients are often unavailable, and many times clients

and agents have conflicting schedules. Then, too, agents get sick, take vacations, etc. like everyone else. If indeed there is an abuse here that needs correction, I would recommend extending the ten days to 30 days, or 20 working days. As far as using the mail goes, quite often the client's signature is required and an agent's presence is legally required for witnessing. Perhaps requiring the company, and not the agent, to notify the client of policy issue is the best solution here.

Section 4 (Other Licenses): I'm not sure what this paragraph accomplishes, but it seems rather redundant to me.

Section 4 (Duties of supervising agents): These rules appear to be O.K., except for part C, which seems to violate other rules governing confidentiality of files. Also, do brokerage houses need to annually inspect every agent's files with whom they have done business? Does this rule apply to mail order insurance or the A. L. Williams pyramid style of marketing? Perhaps more importantly, what is the supervising agent supposed to be looking for in the files?

Section 4 (Refunds): While a good agent will follow such a guideline to the best of his or her ability, infrequently such a hard-and-fast rule might be difficult to honor. For example, small rural agencies may shut down for vacations, or an agent may be indisposed for good reason and unable to answer his mail for a short period of time. I believe this rule needs to be more flexible if good cause is present.

Thank you for requesting my comments on the draft proposal. I hope they will be of some assistance to you.

Very truly yours,

Larry A. Becking, RHU

P.S. Some of the points brought out in your draft are not vividly clear to me, both in purpose or in enforcement procedure. If you or someone from your department would be interested in discussing these rules verbally and in more detail, I would be more than happy to do so.

National Home Life
Assurance Company
administrative offices
Valley Forge, Pennsylvania 19493

State of Minnesota
JUL 26 1983
Department of Commerce

July 22, 1983

Mr. Dale McDonnell
Department of Commerce
500 Metro Square Building
St. Paul, Minnesota 55101

Dear Mr. McDonnell,

Re: Request from Mr. O'Malley for comments on new rules governing insurance agents' practices

In responding to Mr. O'Malley's request, it seemed appropriate for me to refer to a presentation which I made at a four day hearing on replacement, conducted by the Illinois Department of Insurance in July, 1981.

I enclose a copy of that presentation by way of comment on the formulation of rules which you are considering.

You might like to refer to the complete report on that hearing. It was published by the Illinois Department of Insurance under the date of October 1, 1981.

Sincerely,

Gerald F. Beavan
Vice President

GFB/lms

Enclosure

Statement by

Gerald F. Beavan

in behalf of

NATIONAL HOME LIFE ASSURANCE COMPANY

Illinois Department of Insurance

Chicago, Illinois

July 21, 1981

My name is Gerald F. Beavan, and I am Vice President of National Home Life Assurance Company, a Missouri domiciled company licensed in Illinois and in all states except New York. An affiliate, National Home Life Assurance Company of New York, serves the residents of that state.

In appearing here today I am speaking on behalf of a company which is primarily a direct response writer of life and health insurance. While it is true that during the past 60 years since our company's incorporation we have always marketed our insurance products in the traditional method—through agents—and do so today, it is also true that our greatest growth has occurred during the past few years since we augmented our agency sales with direct response marketing methods.

I think this distinction is very relevant, because of the nine topics suggested by the Department for inclusion in this testimony, four relate directly to the use of agents, i.e.:

Item A

"Are commissions becoming too excessive so as to promote replacement?"

Item B

"Is improper, incompleted or distorted disclosure at the point of sale where the problem has its origin?"

Item D

"Should we discontinue permitting temporary agent licenses?"

Item F

"Should companies place more emphasis on the quality of agents they hire?"

And at least two other suggested discussion areas relate perhaps less directly to agents:

Item G

"Do consumers understand Modified Premium Whole Life Insurance?"

Item H

"Should more information concerning the replacement of life insurance be made available to consumers?"

I fully realize that this hearing is not intended to be a forum for a discussion of the merits or lack thereof of variant marketing methods. However, currently about 80% of our company's life insurance premium is being produced through direct response marketing, and therefore quite obviously that marketing method has a major impact upon my thinking.

Replacement is not at all a major element of direct response marketed life insurance business. In our direct response marketing procedures, if the replacement question on the application is answered in the affirmative; i.e. if a replacement is indicated, it is our company's standard practice to decline the application. It is my impression that this practice is quite prevalent among all direct response writers.

Our agency operations involve two methods: phone marketing and field marketing. In the phone marketing area our procedures are identical to the direct response area—if replacement is involved, the application is declined. In the field marketing area where there is a face-to-face confrontation, replacements are accepted only if it is a valid replacement situation. I have reviewed our field marketing results for the first five

months of 1981, and we have not averaged more than two or three replacements per month for the entire nation.

Let me say that this situation did not always prevail. Prior to June 1980, for something less than two years, we were the principal underwriter for the A. L. Williams organization, where the products being sold were so-called "deposit term" policies. During that period of time we were heavily involved in the replacement business.

With this introduction I will now touch upon the suggested topics, and my comments will be based upon our present procedures and past experiences.

At this point let me interject this comment that I do not believe that all replacements are wrong, per se. I recently had some correspondence with the Chief Executive Officer of one of the nation's largest life companies who characterized replacements as "nefarious." To adhere to such a position is to adopt the view that every life insurance policy currently in force in this country is the correct and only correct policy for every person in the United States—and that is patently absurd.

Now to the suggested topics.

Commissions. It would seem to me that the commission structures of the so-called "deposit term" products do encourage replacements . . . just as it is true that the higher commissions associated with whole life policies have encouraged the sale of those products over term insurance policies through the years.

Disclosure. In my judgement the improper, incomplete and distorted disclosure at the

point of sale is indeed at the root of this problem for two reasons: (1) If the initial sale is improperly made so that the insured does not clearly understand the coverage, that policy is ripe for replacement. (2) If the agent fails to make full and honest disclosure in attempting a replacement, then any policy is apt to be replaced.

Cash Values. I am not going to attempt to answer this question. The industry is going through such a period of change with respect to the nature of the life insurance product that it does not seem reasonable to me to mandate that cash values be required in every life insurance product in the first, second, third or even fifth or tenth year.

Indicative of this change are recent statements by the Chairman of one of the nation's top 20 companies: "The basic whole life product is not well suited in today's economy. The product was not designed for double-digit inflation. It was not designed for 20% interest rates. It can no longer meet some of the needs it served so well, and our customers realize this." This is not an uncommon view today, and to go against it and mandate certain cash values seems to me to be wholly inappropriate.

Temporary Agent Licenses. To answer the question as to whether the Department should discontinue issuing temporary agent licenses, the simplest answer is no . . . continue to do business as usual and maintain the status quo. However, there are other ways to look at this question, and other possible answers. I invite your consideration of at least one such alternative. I constantly hear some of my colleagues in the industry speak of the "professional insurance agent." And I am inclined to agree that this could be a profession . . . and could be regulated as such. And there is the possibility that it should be so regarded. I do not believe that any of us would be very comfortable if our local hospital administrator would say to some attractive young person: "I know you want to

become a doctor, but it will take some time for you to meet all of the requirements. Therefore we are going to give you a temporary license so you can get right to work practicing surgery." I don't think we would feel particularly at ease in a jet aircraft with some eager young person who always wanted to be a pilot, at the controls under a temporary license. We probably wouldn't even accept a plumber who walked in off the street with a temporary license to do experimental repairs on the plumbing in our house.

This question seems to follow: why then should we hand out temporary licenses to anyone who evidences a desire to become an insurance agent, and thus legally permit them to manipulate the future financial security of the people of this country?

If this is a profession—and I believe it should be—then for a person to qualify for a license it would seem reasonable that the Department should require prescribed advance training, and offer a meaningful examination process. Let me illustrate a non-meaningful examination process. I remember when I first took the examination for my agent's license. There were 150 questions with multiple choice answers . . . 3 possible answers to each question. I answered those which I was sure about—less than half—and then divided the remaining number of questions by 3. I then checked an equal number of each of the 3 choices: the same number of A's, B's and C's and turned in my examination sheet. I received a score well above the required level. That to me was not a meaningful examination. I think an argument can be made whereby that sort of examination, along with temporary licenses, would be discarded in favor of a realistic training and examination process to produce professional agents. As I said at the outset, this is one possible alternative response to the question about temporary licenses. It is probably too idealistic to receive any serious consideration.

Policyholder Service. To be perfectly frank, I don't think the companies could do any more than they are presently doing in the area of policyholder service. In many cases the only intangible that separates one product from another, one company from another, is the level of service provided to the consumer. Any insurance company which gives poor service cannot survive in today's competitive business environment. As far as individual agents are concerned, I suppose there is always room for improvement.

Agent Retention. There is no question but that the quality of agents is the key to many of the problems that beset our industry. We have spoken to the matter of the training and examination process. Inherent in the employment process should be character evaluation, determination of intelligence and aptitude, etc. Mass recruiting binges at company sponsored cocktail parties are not, in my judgement, the way to enlist new agents.

Modified Premium Whole Life Insurance. Since we do not sell this product, it is extremely difficult for me to comment on consumer understanding of it.

Consumer Information Concerning Replacement. This is a subject which is currently experiencing another review and re-evaluation. The NAIC Model Replacement Regulation of 1969 obviously had some shortcomings. The new NAIC Model of 1978 was designed to correct those flaws and to dovetail with the Solicitation and Cost Disclosure Model Regulation—and now not only the Replacement Regulation but also the Solicitation/Cost Disclosure Regulation are being severly criticized by many. Obviously some consumer information is necessary; whether it is "more" information . . . or "better" information is the question to be answered. If I had to cast a vote, I suppose it would be for "better" information as opposed to "more." Whatever decision is reached at the NAIC level, we would certainly urge widespread uniformity of regulation at the state level.

Department Role. If the improper replacement of life insurance policies is deemed to be a problem then the Department should look to the source of the problem, which rests obviously in the actions of certain agents. The Department should take steps to ensure that the right kind of people are recruited . . . and that they are adequately trained and properly examined before being licensed as agents. The Department should take steps to ensure that proper disclosure is made at the point of sale so that the consumer understands what is being purchased, and buys the correct product for his or her situation. Finally, the Department should take steps to require adequate disclosure in the event of any proposed replacement so that the consumer is well informed as to what is happening in the replacement transaction. These seem to be such obvious requirements. One wonders why they are not enforced, considering the extensive authority which rests with the various State Insurance Departments.

On behalf of National Home I want to express my appreciation for this opportunity to make these comments even though they involve an aspect of the life insurance business in which we are really not involved.

Insurance Federation of Minnesota
1310 Pioneer Building
St. Paul, MN 55101
(612) 292-1099

STATE OF MINNESOTA
SEP 7 1983
DEPARTMENT OF COMMERCE

September 1, 1983

Mr. Dale McDonnell
Minnesota Department of Commerce
500 Metro Square Building
St. Paul, Minnesota 55101

RE: Proposed Insurance Agent Rules

Dear Dale:

Commissioner Hatch recently forwarded to our office a copy of the above draft rules for our review and comment. He advised that we submit written comments to you.

We have set up within the Insurance Federation a special Task Force to our Legislative Committee to review the various drafts of fair trade practices regulations that the department is promulgating at this time. Our Task Force recently met and considered the insurance agent rules. Based on that meeting, we submit the following comments and proposed revisions for your consideration.

Our comments refer to the draft dated August 4, 1983, with references to the page numbers of that draft.

1) Page 1, "Definition" Section, Subparagraph B
We suggest that this be shortened for sake of clarity to read "brokerage business means that business transacted by licensed insurance agents as defined under Minn. Stat. Section 60A.17, Subd. 3."

2) Page 1 "Definition" Section, Subparagraph C
We would suggest deleting the bracketed language "brokering agent" and replace it with the following, "Placing agent." We believe this change better explains the concept that is being defined under the subparagraph.

3) Page 1, "Definition" Section, Subparagraph F
We propose that this subparagraph be deleted from the definition section as it creates a redundancy given the definition of "agent" established in subparagraph A. The reference under Subparagraph A to Minn. Stat. 60A.17 is inclusive of what is included in the current draft subparagraph F.

4) Page 2, "Definition" Section, Subparagraph G
Our suggestion here is the addition at the end of the first sentence, which finishes on the top of page 2, of the words, "in his or her name." This addition clarifies the situations which this definition is obviously intended to apply to.

5) Page 4, "Delivery of Policies" Section
We propose on the third line of this section the addition of the word "notice" before the word "mailed." We believe this is necessary because of the lack of contractual authority of some agents, particularly in the life/health area, to mail contracts to policyholders. Also, it is our belief that the ten day delivery requirement at the end of this proposed section should be expanded to twenty days to recognize time difficulties that a rural agent may encounter.

6) Page 4, "Signatures on Applications" Section
Initially, we propose that you consider deleting from this section an area of insurance marketing that simply does not lend itself to to this requirement of the signature of the soliciting agent, namely mass marketing. It appears that this requirement of the signature is intended to apply to a transaction between a licensed agent and an individual. The 1983 law further changing the medicare supplement sales area, Chapter 263, 1983 Session Laws, recognized specifically the uniqueness of the mass marketed life insurance product for senior citizens by exempting from the requirement that any individual life insurance policy sold to a person 65 years of age or older must have a signed and completed copy of the application left with the applicant at the time the application is made. A similar exemption should be factored into this section for all mass marketed products.

Also, we propose on the first line of this section after the word "signature" the additional phrase "or facsimile signature". We believe this a reasonable practice given the amounts of paperwork that have to be processed by agencies.

Finally, we suggest the addition of an exemption on line 2 after the word "agent" as follows, "This requirement does not apply to clerical or administrative employees of an insurance agent as as defined in Minn. Stat. Section 60A.17, Subdivision 1, Subparagraph H, Subdivision 6."

7) Page 6, "Duties of Supervising Agents" Section
We propose the deletion under subparagraph B, line 2, of the word "written". We believe it unrealistic to impose a regulatory requirement that all agencies have written procedures for the supervision of activities within their agency given the fact that there are a number of smaller agencies that have one agent and clerical staff only. We believe that it simply is not reasonable to require a written manual in these situations.

We question the advisability of requiring under Subparagraph C every supervising agent to have annual examinations of the claim accounts of every agent under that supervisor's control because insurance transactions within the state already are governed by a number of laws and regulations to protect consumers. We feel that these laws and regulations are sufficient protections. Undue regulatory burdens upon the operations of agencies will merely add to the cost of insurance that Minnesota residents will have to pay for.

8) Page 6, "Suitability" Section
Our reaction in general to the language in this section is one of extreme doubt as to the enforceability of the vague general standards proposed here. It is our conclusion that these are standards that the regulatory agency will be unable to apply uniformly and in fact will result in more confusion by having this requirement applicable to every insurance transaction in the state of Minnesota. It is our opinion that with this kind of suitability language a number of questions can and will be created in virtually all lines of insurance once losses have occurred regarding whether or not these general standards were met by the agent and insurers at the initial time of buying insurance coverage. While perhaps a case can be made that in some unique circumstances, such as dealing with senior citizens in the medicare supplement area, that these kinds of standards ought to apply, it clearly does not translate to the many commercial situations where there is arms-length negotiations between insurers and businesses buying various coverages.

9) Page 7, "High Standards of Commercial Honor" Section
In general we have the same comments as in the above paragraph dealing with "Suitability."

10) Page 8, "Receipt of Client Funds" Section
We propose a technical revision in Subparagraph A as follows, after "funds" on line 2 add "on behalf of the insurer" and after the last word in that sentence add "for the client".

11) Page 8, "Mandatory Financial Records of Agents and Agencies" Section
After the word "instruments." on line 4 we propose the addition of the following sentence "Insurers represented by exclusive agents may establish and keep the financial records required by this section." In this situation alone we believe it's appropriate to allow the insurer to perform the duties required.

12) Page 9, "Mandatory Complaint Records" Section
It's our opinion that this whole section creates an excessive amount of paperwork would have to be established by agents. This runs counter to the master folder concept that is utilized within a majority of agencies in processing business on a day to day basis. We believe that the expenses and the time necessary to meet this requirement simply do not serve the purposes of the state in in regulating the insurance business or the public in needing to have these kinds of details maintained by each and every agent

within the state. In lieu of this requirement, we have some specific suggested changes in wording that we believe maintains the department's intent in terms of having access to this information in a centralized and readily identifiable form. We propose that this section be rewritten as follows: "Every agent and agency must compile and maintain a log on complaints. The log must refer to the client's file where information must be maintained and which contains all written notes, reports, correspondence or other documents made or received by an agent or agency, etc." With this change in requirement to maintenance of a log of complaints, the department's purpose in having this information readily available and specific enough to be utilized in enforcement is in our opinion accomplished.

13) Page 9, "Termination of Appointments or Contracts" Section
Current Minnesota law, Minn. Stat. 60A.17, Subdivision 5b governs the term of appointments of agents by insurers and specifically requires written notice to the Commissioner of a termination of appointment. Under this statute, insurers are protected from potential liability as a result of supplying the reasons for termination. We suggest that this statute be referenced under this rule and a sentence added at the end of the proposed section to read as follows: "Any information given to the Commerce Department in accordance with this section is privileged, and may not form the basis for any cause of action by an agent against the insurer.

Within this same section we would propose on page 10, line 5, the deletion of the word "original" and replaced with the word "copies or the original be made available for inspection". It is our concern that with a specific requirement of forwarding of the originals of applications that we as insurers would be putting ourselves in a difficult position in managing litigation that can subsequently arise in any given situation.

We appreciate your consideration of our comments and would be happy to arrange a meeting at your convenience to discuss these matters in greater detail.

Sincerely,

Bob Johnson

Robert D. Johnson
Vice President

RDJ:KAS

SF-00006-03

STATE OF MINNESOTA

DEPARTMENT of Commerce

Office Memorandum

TO: Dale McDonnell

DATE: 9-8-83

FROM: Don Peterson

PHONE:

SUBJECT: 1. Insurance Agent Rules
2. Unfair Trade Practices

I have just these few comments about the draft copies of the above rules to be promulgated soon.

Insurance Agent Rules

1. The "Suitability" provision on page 6 appears to be identical to "Suitability of Policies" provision on page 4 of the Unfair Trade Practices rules. Is this intended?
2. "Registered office for resident agents" (page 7). I would recommend that P.O. Box addresses be made unacceptable (thinking about the Ross Dworsky case).
3. Item C. under "Mandatory financial records of agents and agencies "(page 9) requires that records be made available for examination by the Commissioner (or designee). Would it be adviseable to have a similar requirement for "Mandatory complaint records" also on page 9?
4. Over the years, I have received dozens of inquiries from agents about such things as:
   a. Can I hire phone callers to make appointments for me, without having them licensed?
   b. Can I give free pens, or road atlases, or first aid kits, or jackets to people who buy insurance from me? Or, who allow me to quot a premium?
   c. Can I donate all (or part) of my commission to a prospects favorite charity or organization such as Babe Ruth League, etc., if the prospect agrees to buy insurance from me?
   d. If the local Lions Club "steers" members to me for insurance, can I pay the club a fee for each person who buys a policy?

   Would it be adviseable to deal in a general way with these subjects in the new Insurance Agent Rules?

Unfair Trade Practices

The proposed rules appear to be aimed primarily at life and health insurance advertising. The general requirements (such as "deceptive words, phrases or illustrations") would apply to property and casualty lines, of course. But there are virtually no specific requirements for these lines, as there are for life and health. For example, we have long had an "in house" requirement that when an ad quotes a premium (for auto, homeowners, etc.) the name of the insurer (not just the agent) must appear in the ad. We also have generally required that classification criteria for the premium also be shown. Perhaps thought should be given to including a few specific requirements for property and casulaty lines.

cc: Tom O'Malley

IDS

IDS LIFE INSURANCE COMPANY IDS Tower, Minneapolis, Minnesota 55402

September 15, 1983

Mr. Dale McDonnell
Minnesota Department of Commerce
500 Metro Square Building
St. Paul, MN 55101

RE: Proposed Insurance Agent Rules

Dear Dale:

While IDS did not receive a copy of this draft proposed insurance agent rules, we have reviewed such and offer the following comments in addition to the comments already provided to you by the Insurance Federation of Minnesota. We generally concur with the comments and issues raised by the Insurance Federation and have only again emphasized the problems on Page 6, "Suitability" and Page 7 "High Standards of Commercial Honor" sections. I would refer you to item 3. of my concurrent letter on marketing standards. I have discussed in that item the problems entailed with the vague standards outlined under suitability requirements. Such problems also occur with respect to the broad definition outlined with respect to "commercial honor".

If you have any questions, please call me.

Sincerely,

David F. Dierenfeldt
Associate General Counsel

DFD:bab

IDS LIFE INSURANCE COMPANY
IDS Tower
Minneapolis, Minnesota 55402

December 19, 1983

State ... Minnesota
DEC 22 1983
Department of Comm...

Mr. Thomas L. O'Malley
Department of Commerce
500 Metro Square Building
St. Paul, MN 55101

RE: Proposed Rules Relating to Insurance Agent Practices
For MCAR SS1.9011 - 1.90281

Dear Mr. O'Malley:

As provided in the Notice of Intent to Adopt Rules Without Public Hearing received on November 29, 1983 by IDS Life Insurance Company from the Minnesota Department of Commerce, I wish to submit the following comments on 4 MCAR S1.9019 Suitability.

IDS Life Insurance Company requests that 4 MCAR S1.9019 be reviewed and reconsidered by the Department of Commerce and that the alternate language which I have attached to this letter be substituted for the language currently proposed.

As briefly touched on in IDS Life Insurance Company's September 15 and October 24 comments on exposure drafts of this rule, there are at least several reasons which support and compel modification of the proposed language. They are as follows:

1. The "suitability" provisions as currently drafted are extremely broad and vague. They provide no guidance to the agent as to what information should be sought.

   The alternate language establishes three pertinent areas with respect to which the agent must make inquiry: (a) customer's objectives; (b) customer's financial situation and needs; and (c) any other information known by the agent.

2. The proposed "suitability" provision requires that the agent make reasonable inquiries to determine suitability. However, there is no guidance or limit as to the sources which the agent must contact in making reasonable inquiries.

   The alternative language retains the requirement that the agent make reasonable inquiry and contains a requirement that the agent have

reasonable grounds for believing the recommendation is suitable to the customer. The agent is accountable for information known by the agent. The alternative language differs from the proposed language, however, in requiring that the agent's reasonable inquiry be on the basis of information furnished by the customer. The customer is the person with whom the agent is dealing. The person from whom the agent obtains information should be the customer or persons whom the customer requests be contacted. To require otherwise may dictate that the agent violate customer desires or confidences in obtaining information to otherwise satisfy the reasonableness requirements of the proposed "suitability" provision.

3. The alternative language attached is based upon proposed National Association of Securities Administrators guidelines on ethical business practices for investment advisers (Section 1), as modified by me to apply to insurance transactions.

   The background of this particular section and prior securities industry compliance efforts, provide a workable basis upon which agents and insurance companies can develop procedures to insure compliance with these requirements.

4. The proposed "suitability" provision, because of its broad scope, potentially requires that an agent predict with certainty a client's future situation.

   The alternative language recognizes that the agent must rely upon information provided by the customer at the particular point in time at which the insurance purchase recommendation is being made.

We would appreciate your consideration of your comments and the alternative language. If you have any questions, or desire further information, please contact me.

Sincerely,

David F. Dierenfeldt
Associate General Counsel

DFD:bab

Alternate language for Marketing Standards, Section V and Insurance Agent Rules, 4MCAR§____ Suitability:

Suitability of Policies: An agent shall not recommend the purchase of any insurance to a customer, without reasonable grounds for believing that the recommendation is suitable for the customer on the basis of information furnished by the customer after reasonable inquiry concerning the customer's objectives, financial situation and needs, and any other information known by the agent.

Dominic Sposeto & Associates

3916 CHOWEN AVENUE S. • MINNEAPOLIS, MN 55410

December 19, 1983

Michael A. Hatch
Commissioner of Commerce
Departmemt of Commerce
500 Metro Square Building
St. Paul, MN 55101

Dear Commissioner Hatch:

After considerable discussion and debate the Independent Insurance Agents of Minnesota and the Minnesota Association of Professional Insurance Agents have both decided not to oppose your recently proposed "Agent Conduct Rules". Both associations have concluded that although your proposed rules are quite extensive and may place a burden upon several insurance agents, the intent of the rules and their appropriate administration and enforcement will lead to a more professional insurance agent force in Minnesota.

However, there are two concerns regarding the rules that I was directed to call to your attention. They are as follows:

1. 4 MCAR S 1.9018 Duties of supervising agents. The title of section C. is erroneous. Since the content of that section was amended to authorize examinations as often as necessary to insure proper supervision, the title, Annual Account Examinations, is inappropriate. We would request deletion of the word "Annual" from the section title.

2. 4 MCAR S 1,0927 Refunds. Considerable discussion took place within both associations relating to the time frame for the delivery of refunds. In general, most agents entering the discussion felt that five days was too short a period in which to deliver refunds. A question arose as to how the Department would enforce the rule where a refund is not made by the company in the form of a check to the insured but as a credit to a particular agent's account with the company. It is my understanding that this is a fairly frequent practice and the associations are concern over what point in time the agent actually receives the refund.

   Also, in some cases, the client will direct the agent to retain the refund and perhaps use it to pay premiums due at a future date. We would recommend that the rules be amended to provide that an agent may be authorized to maintain a refund at the expressed direction of a client.

Both associations and I very much appreciate the ample opportunity you have afforded us to work with you and your staff on these proposed rules. On behalf of the IIAM and the PIA, I offer our continue assistance in the future.

Sincerely,

Dominic J. Sposeto

Dominic J. Sposeto

Photocc: Clayton Cram & James Anderson

The Lafayette Life Insurance Company.

Lafayette Life Companies

Lafayette National Life Assurance Company

December 21, 1983

Mr. Thomas L. O'Malley
Department of Commerce
500 Metro Square Building
St. Paul, MN 55101

Re: Proposed Adoption of Rules Relating to Insurance Agent Conduct

Dear Mr. O'Malley:

We have received and reviewed a copy of the proposed rule relating to insurance agent conduct.

On the whole, we believe that the proposed regulation has much merit and we applaud the department's efforts to create more discernible standards in this area.

We do wish to offer comments on two subjects.

Insurance companies and agencies making reports of termination of appointments in accordance with 4 M.C.A.R. Section 1.9026 need to have such reports protected from disclosure or use as the basis for any civil action against the insurer or agency. We believe the requirement for report of such alleged matters is important to the insurance industry as a whole and to the public. Such reports give the regulator an opportunity to review situations and make determinations as to what circumstances warrant suspension or revocation of licenses. But, persons making such reports to the governmental agency run a risk of legal liability and the not inconsequential risk of simply having to defend a separate civil action for defamation.

Other states which have adopted such rules, by statute, create an absolute privilege with respect to such reports and bar the reports from use as the basis of civil action. We believe that that is a necessary addition to your regulation on the subject but the department should consider, under Minnesota law, whether a regulation itself will be sufficient to afford such protection to insurers and agencies.

Secondly, we believe that adoption of a suitability requirement is unwise and impractical. There is not, and cannot be an objective standard upon which an agent could conceivably judge suitability even if he knew all the facts about a consumer's financial abilities and obligations. Suitability of insurance purchase is a matter of the consumer's personal values; who does he wish to protect and to what extent does the consumer wish to benefit those persons. The suitability standard is unworkable and we urge that it not be adopted.

Please let us know if you have any questions concerning our comments.

THE LAFAYETTE LIFE INSURANCE COMPANY

Edward B. Wallis
Vice President and
Home Office Counsel

EBW:cmm

CC: Robert J. Demichelis
Associate General Counsel
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Robert J. Demichelis
Associate General Counsel

January 9, 1984

Mr. Thomas I. O'Malley
Department of Commerce
500 Metro Square Building
St. Paul, Minneapolis 55101

Re: Proposed Adoption of Rules Relating to Insurance Agent Conduct (4MCAR §§1.9011-1.90281)

Dear Mr. O'Malley:

This response is made on behalf of the American Council of Life Insurance to the notice of intent to adopt rules without a public hearing. The American Council of Life Insurance is a trade association with more than 570 member companies with assets representing 95 percent of the life insurance in force in the United States.

Although the Department of Commerce proposals are described as noncontroversial, there is one provision in particular that does not fall into that description. That is §1.9019, dealing with suitability requirements.

The Council believes there is no need to impose a suitability requirement on the sales practices of life insurance agents. The liability of agents for their acts has been clearly established by the courts. The landmark cases of Knox v. Anderson, 297 F2d 702 (CA-9 Hawaii 1961, cert. denied 370 U.S. 915 (1962)) and Hardt v. Brink, 192 F. Supp. 879 (D.C. Wash. 1961) highlight the liability of insurance agents to their insureds for failure to perform to the standards of professionalism expected where the agent's recommendations are not responsive to the client's needs.

The increased awareness of potential tort liability has led many agents and brokers to obtain errors and omissions coverage, which is readily available on a group or individual basis. Coverage under a policy made available by the National Association of Life Underwriters includes a breach of duty by an agent or broker

and therefore protects the public by providing compensation for the negligent acts of such agents or brokers. Other policies are available with even broader coverage. The Council has concluded that the liability in common law fraud and the existence of errors and omissions coverage provides satisfactory remedies to the consumer and the opportunity for realistic recovery of any damages which may have been suffered.

If the intent of a regulatory provision relating to suitability is to provide the Commerce Commissioner with an additional tool to bring disciplinary action against agents or insurers, we submit that the Commissioner already has sufficient authority under the Unfair Trade Practices Act and the Agents and Brokers Licensing Act which prohibit misrepresentations in the sale of insurance and dishonest and deceptive sales practices by agents and brokers. (See §60A.17, Minn. Stat.).

It is common knowledge that securities salesmen are subject to a suitability requirement imposed by the National Association of Securities Dealers on its members, and by the Securities and Exchange Commission on nonmembers. The genesis of those requirements is not the antifraud provisions of the federal securities law, but rather the ethical guidelines of the self-regulatory agencies. The facts are that the rule has been used sparingly and, as noted in the NASD Manual, disciplinary action for violation of the rule has been taken only in cases of flagrant unethical or illegal conduct. The courts have been reluctant to imply a private right of action for violation of the NASD and stock exchange suitability rules, however, remedies in common law fraud and under the antifraud provisions of federal securities laws are often available in such circumstances. The Council submits that adoption of a suitability rule for insurance sales would create confusion among those interpreting the rule and those subject to it, because of comparisons that would tend to be made with actions taken by securities regulators.

Should the Department of Commerce conclude that some language addressing the issue of suitability must be included in the proposed agent conduct rule, the Council suggests that careful consideration be given to language currently included in Wisconsin Administrative Rule, INS. 2.14(5)(f):

> "The purchase or replacement of any life insurance contract or annuity shall not be recommended by an insurer or intermediary without reasonable grounds to believe that the recommendation is <u>not unsuitable</u> for the applicant on the basis of information furnished by such person after reasonable inquiry as may be necessary under the circumstances concerning the prospective buyers insurance and annuity needs and means."

The Wisconsin provision is very similar to Rule 15b10-3, first adopted by the Securities and Exchange Commission in 1967:

> "Every nonmember broker or dealer and every associated person who recommends to a customer the purchase, sale or exchange of any security shall have reasonable grounds to believe that the recommendation in not suitable for such customer on the basis of information furnished by such customer after reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other information known by such broker or dealer or associated person."

One other state, North Carolina, has addressed the suitability issue by prohibiting in its Unfair Trade Practice Act [Title 8, §4724(16)]:

> "Soliciting, selling, or issuing an insurance policy when the person soliciting, selling, or issuing the policy has reason to know or should have reason to know that it is unsuitable for the person purchasing it."

The Council urges the Commissioner of Commerce to consider the precedents cited above in his review of proposed rule 4 MCAR §1.9019. Although it is our view that a suitability provision is not appropriate or necessary for insurance solicitations, if such a provision is deemed to be necessary, the Wisconsin language would be superior to the current proposed provision.

Although not truly controversial, the second paragraph of proposed Rule §1.9022 would appear to be an unnecessary duplication of a similar prohibition which is currently under consideration in the Rules Relating to Insurance Marketing Standards, specifically 4 MCAR §1.9431B. Since the proposal is concerned with an advertisement or representation, it would appear to be more appropriate for inclusion in the latter rules, rather than in 4 MCAR §§1.9011-1.90281.

As a final comment, the Council recommends that §1.9026 be amended to reference Minn. Stat. 60A.17, Subdivision 56, which governs the notification of agents' terminations. The statute protects insurers from potential liability as a result of supplying reasons for termination. The proposed rule would be clarified and made more understandable to all parties if a sentence were added, such as: "Any information given to the Commerce Department in accordance with this provision is privileged, and may not form the basis for any cause of action by an agent against the insurer."

The Council appreciates this opportunity to comment on the proposed rules relating to insurance agent conduct.

Sincerely,

Robert J. Demichelis

RJD/cr

W. CLEMENT STONE
CHAIRMAN

PATRICK G. RYAN
PRESIDENT

COMBINED INSURANCE COMPANY OF AMERICA

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State of Minnesota

JAN 30 1984

Department of Commerce

January 25, 1984

Mr. Thomas L. O'Malley
Department of Commerce
500 Metro Square Building
St. Paul, Minnesota 55101

RE: Proposed Adoption of Rules Relating to Insurance Agent Conduct

Dear Mr. O'Malley:

After reviewing the Proposed Rules Relating to Insurance Agents Conduct (4 MCAR Section 1.9011-1.90281), we would urge you not to adopt this rule in its present form. Specifically, the section regarding "Suitability" (Section 1.9019) would place an undue burden on insurance agents, particularly those selling insurance policies which are supplemental in nature and are not intended to replace any existing policies. If an agent is required to determine the suitability of a policy for an individual, the individual's freedom of choice regarding the purchase or non-purchase of a particular insurance policy could become limited. We would, therefore, recommend the deletion of this provision in its entirety.

In the alternative, we would suggest an amendment with regard to the sale of supplemental insurance. Such an amendment could be phrased as follows:

> "In recommending the purchase of any life, endowment, annuity, life endowment, or medicare supplement insurance to a customer, an agent must have reasonable grounds for believing that the recommendation is suitable for the customer and must make reasonable inquiries to determine suitability." This section shall not apply to the sale of supplemental insurance which is not intended to replace any existing policies other than medicare supplemental insurance. The suitability of a recommended purchase of insurance . . . recommended policy or policies."

If you have any questions regarding the above, please do not hesitate to call or write.

Very truly yours,

COMBINED INSURANCE COMPANY OF AMERICA

Debra R. Lester - Counsel
Government Relations Department

DRL/dm

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of the Proposed Adoption of Rules Relating to Trade Conduct - Agent Conduct

FINDINGS OF FACT AND CONCLUSIONS

The above-entitled rules were proposed to be adopted without a public hearing on November 28, 1983, after proper notice of intent to adopt these rules as required by Minn. Stat. § 14.22 was served upon all groups registered with the Department of Commerce for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony and considered all of the evidence adduced upon the records, files and proceedings herein, I find the following:

FINDINGS OF FACT

1. 4MCAR § 1.9018C. - This section contains an obsolete reference in its title. As published the title read "Annual Account Examination". The rule as published does not require an annual account examination. Accordingly, the word "Annual" has been deleted from the title of this paragraph. p.4

In addition, the language of the first sentence is confusing and in need of clarification. That sentence has therefore been changed as follows:

- In the first sentence, after the word "examination" the phrase "for each agent" was inserted. After the word "accounts" the words "for each agent who is" were deleted and the words "which are" were inserted. p.4

These changes are for clarification only and to make the language clearer and more comprehensible in accordance with their original intent. No additional requirements are imposed by this change.

2. 4MCAR § 1.9019 - The first sentence of the published rule contains the words "medical supplement". The word "medical" is a typographical error. The rule is intended to refer to a particular type of insurance called "Medicare supplement" insurance. The word "medical" has therefore been deleted and the word "medicare" inserted in its stead. No change in intent, effect or impact results from correcting this typographical error. p.5

3. 4MCAR § 1.9024C. - In the first sentence of this section a word was inadvertently inserted. The word is "funds" and is merely a typographical error. This word should be deleted. There is no change in the impact or intent of this section. p.6

CONCLUSIONS

That the proposed rules be amended in accordance with the above Findings of Fact.

Michael A. Hatch
Commissioner of Commerce

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of the Proposed Rules Relating to Trade Conduct - Agent Conduct

STATEMENT OF NEED AND REASONABLENESS

STATEMENT OF NEED AND REASONABLENESS

Minn. Stat. § 60A.17, subd. 15, gives the Commissioner of Commerce (hereinafter "Commissioner") authority to "adopt rules pursuant to Chapter 14 to further implement and administer the provisions of this section." This section requires that all persons that act or assume to act as insurance agents in the solicitation or procurement of applications for insurance, the sale of insurance policies, or in any manner act as an insurance agent in negotiation of insurance by or with an insurer, must obtain a license from the Commissioner to do so. This section sets forth the requirements to obtain such a license and Subd. 6(c) of that section sets forth the grounds on which the Commissioner may revoke or suspend a license or impose a civil penalty upon an agent. These rules are needed to further delineate those requirements and standards.

There are a number of areas where the standards specified in section 60A.17 are unclear and there is a need to further delineate those standards. Some of those areas include standards for supervision of agents, standards and guidelines for obtaining loans from clients, recordkeeping requirements for agents regarding complaints received by them and their financial records, and requirements for insurers and agencies to report information to the Commissioner upon termination of an agent's appointment.

The staff of the Department of Commerce has noted the re-occurence of a number of complaints about similar agent practices or activities. Although most agents are diligent in their efforts to serve their clients and other people they deal with, there are occasions in which the service rendered or the actions of the agent are so wanting that reasonable rules are necessary to assure that fair and reasonable standards of conduct are established and adhered to.

Also, it should not be necessary that courts be burdened because of such practices. The Department recognizes that redress may be available in the Court system, however, this is often not practical because of the cost in time, fees, and lost wages.

The rules define in greater detail practices related to agent conduct which are improper. As more fully indicated below, the proposed rules reasonably address the above-stated needs.

HISTORY

On July 11, 1983, the Commissioner published Notice of Intent to Solicit Outside Opinion at 8 S.R. 65 for his consideration in the promulgation of regulations under Minn. Stat. § 60A.17. After review of the comments solicited, the Commissioner proposed rules governing insurance agent conduct on November 14, 1983, and published the proposed rules in the State Register on November 28, 1983.

FACTS ESTABLISHING REASONABLENESS

4 MCAR § 1.9012 Definitions.

Proposed Rule 4 MCAR § 1.9012 defines certain terms used in the proposed substantive rules. The definitions are necessary to enable persons affected by the propsed rules to comprehend their full meaning,

effect and applicability. Definitions which are material to a full understanding of the proposed rules are more fully discussed below in the context of the appropriate substantive provisions.

4 MCAR § 1.9013 Loans from clients.

This proposed rule is intended to address one of the most serious situations which the Department has learned of in recent years. The Department has documented many cases of insurance agents accepting loans from clients under what are at best questionable circumstances. In some cases clients were clearly taken advantage of, and loans were indicative of fraudulent, coercive, dishonest and/or untrustworthy practices committed by the agent in violation of Minn. Stat. § 60A.17, subds. 6 and 6c(a)(9) (1982), as amended.

The proposed rule has two parts. Paragraph A requires that loans obtained from clients be reduced to writing and that the lenders be given a copy. The contract or note can be the sole effective means a client has of proving the existence of a debt, and the document is essential to an objective review of the transaction.

Paragraph B of the rule states that agents must not solicit or accept loans under dishonest, unfair or unconscionable circumstances. The Department's experience in this area shows a variety of misconduct, including the acceptance of no interest loans from unsophisticated lenders based only on questionable, oral agreements; the acceptance of loans from persons known to be susceptible to high pressure solicitations; the use of loans to conceal past systematic overcollection of premiums; the refusal to pay agreed-upon interest; and the acceptance of unsecured loans for questionable investments. There have also been cases involving disputes as to whether particular funds were intended as loans to agents or as

payment of insurance premiums. Given this variety of fact situations, it would be difficult if not impossible to formulate a simple rules governing loans. The proposed rule therefore uses the general terms "dishonest, unfair or unconscionable", and contains a number of criteria for evaluating individual transactions to determine whether the agent involved acted in an honest, trustworthy and fair manner toward her/his client lender.

With respect to the individual criteria, the most important is clearly the prior relationship between agent and lender. It should be noted that the rule only applies to individuals (i.e. natural persons) with whom the agent came into contact in the course of her/his business (i.e. clients). Taken together, these two factors would eliminate from further Department scrutiny the vast majority of cases where agents borrow money from old friends or business associates whose relationship with the borrower is only incidental to that person's role as an insurance agent.

The remaining criteria are all calculated address the issue of whether a particular loan was made in an arm's length transaction between two individuals of relatively equal bargaining power, on the one hand, or under circumstances indicating agent misconduct on the other.

Paragraph C of the proposed rule requires agents to compile and maintain a file pertaining to client loans. Loan records must be kept for at least six years after the loans have been fully repaid. Since agents who have borrowed money from clients presumably have records thereof, paragraph C merely calls for pulling that information together in a single file. That file will be useful for agents in assessing their financial obligations, and will facilitate investigations and monitoring of agent compliance with the substantive rule.

4 MCAR § 1.9014 Delivery of Policies.

This proposed rule requires agents to deliver or mail policies to their clients within 20 working days after receipt from the insurance companies. In some cases, insurance companies send newly issued policies directly to the insureds. It is common, however, for agents to request that new policies be sent to them for delivery. This practice permits agents to review policies for correctness, offers them the opportunity to personally contact insureds, re-explain policy provisions and answer questions. There are no uniform guidelines for delivery time, however, and the lack of standards has caused a number of problems. Based on complaints of non-delivery, and experience which suggests that the failure to deliver policies leads to coverage disputes, prompts time-consuming and unnecessary consumer inquiries, and can be a significant indicator of fraud or professional neglect, the Department has proposed this rule as a means of standardizing practice and establishing norms and expectations for policy delivery.

The proposed rule will ensure that valuable contracts are put into the hands of their owners, upon whom the documents confer important legal rights. Insureds need their policies to determine coverage and compare benefits, and may at the least experience delays in claim processing if policies cannot be found. Timely delivery will also provide customers with assurances that their policies have in fact been issued, thereby substantially decreasing the number of inquiries handled by insurance agents, companies and the Commerce Department from people who have not received their policies and do not know when to expect them. The rule will also deter and aid in the discovery of agent misconduct. Experience shows that the failure to deliver policies can mean that agents failed to apply for them and instead coverted the premiums to their own use. In

addition, some agents have wilfully failed to deliver contracts to conceal other illegal conduct, such as the issuance of life insurance policies to persons who originally applied for health insurance.

The twenty (20) working day delivery requirement should provide ample time for agents who go on vacation or find themselves temporarily indisposed, particularly since the rule permits mailing as well as personal delivery of the policies. The provision for written waiver of delivery recognizes that some insured want agents to retain their insurance policies or portfolios for safekeeping or convenient servicing, while providing that they have a means of proving the location and control of policies in case of later disputes.

4 MCAR § 1.9015 Receipts for insurance-related materials.

This proposed rule simply states that when an agent takes possession of policies or other documents relating to insurance from an insured, she/he must leave an itemized receipt for those materials. The requirement is really one of common courtesy and careful business practices. Nonetheless, the Department has received complaints from individuals unable to contact agents who had taken their policies, or who later had occasion to question what exactly was taken. The Department has also learned of cases of agents taking policies and destroying them in order to conceal illegal conduct such as the sale of unnecessary and duplicative policies. This rule, which again reflects the inherent importance of insurance policies and related documentation to a person who

may be submitting claims and needs to know her/his contractual rights, will reduce the number of complaints and disputes in the future, and expedite the filing and payment of claims.

4 MCAR § 1.9016 Other licenses.

Minn. Stat. § 60A.17, subd. 6, states that a person who is untrustworthy shall not be licensed as an insurance agent. The proposed rule relating to other licenses is largely definitional. It states, in effect, that if a person who holds an insurance agent's license and a real estate or securities license engages in conduct which is serious enough to lead to revocation of the non-insurance license, that same conduct gives the Commissioner grounds to revoke the person's insurance agent license. The proposed rule recognizes the increasing similarity among and overlap in regulation of these industries. Real estate brokers and salespersons, and securities brokers and agents, are in positions of trust and importance similar to those of insurance agents. All hold their licenses from the Commissioner of Commerce. Violations of the statutes pertaining to securities and real estate agents frequently involve the same types of misconduct which are violations of Minn. Stat. § 60A.17, and reflect equally on the violators' fitness to be licensed as insurance agents and to deal with the public in positions of turst. The rule would in no way detract from an agent's right to defend herself/himself in a revocation proceeding under any Department administered statute, and embraces only conduct leading to license revocation, the most serious administrative sanction, not less serious offenses. The rule will provide the

Commissioner with a convenient procedural tool for acting against dishonest persons who hold more than one Commerce Department license, and reduce the need to bring multiple actions against a single individual.

4 MCAR § 1.9017 Criminal convictions; disciplinary actions in other states.

Paragraph A of this proposed rule implements Minn. Stat. § 60A.17, subd. 6c(a)(7) which provides for action against an insurance agent's license if the licensee is convicted of a felony, gross misdemeanor or misdemeanor involving moral turpitude. This rule would require an agent so convicted to report the conviction to the Commissioner within ten working days thereof. In the past, evidence of agents' criminal convictions has come to the Commissioner only by chance, or by affirmative Department investigation. Public protection considerations require that agents notify the Commissioner of criminal convictions, so that she/he may have the opportunity to determine whether disciplinary action is appropriate.

Paragraph B of the proposed rule requires an insurance agent whose insurance, securities or real estate license is disciplined in another state to report that disciplinary action to the Commissioner within ten working days. Other states' disciplinary actions clearly bear on a licensee's fitness to be licensed generally. This section is needed so that the Commissioner may be aware of such disciplinary actions and conduct his own evaluation as to the agent's fitness to be licensed in Minnesota.

4 MCAR § 1.9018 Duties of supervising agents.

Proposed Rule 4 MCAR § 1.9018 defines the responsibilities and duties of supervising agents. "Supervising agent" is defined in Proposed Rule 4 MCAR § 1.9018 as an agent or general agent who contracts with, employs or engages one or more other agents to solicit business or otherwise act as an insurance agent(s) on her/his behalf. The rule is needed in order to correct abuses which have been caused by improper training and supervision of field agents by their supervisors. The rule is really an explicit application of the well settled rule of agency law that a principal is responsible for the conduct of her/his agent. The agency principle and its rationale follow with even greater force from the fact that agents and principals in the insurance industry are held to high statutory standards of care, and their conduct and relationships are closely regulated in the public interest. Making supervising agents responsible for their subagents will increase professionalism, give supervisors incentives to properly train and oversee their subordinates and enhance agent accountability to the Commissioner and to the public.

Paragraph A of the proposed rule provides that supervising agents have the duty to ensure that (1) the agents they employ or contract with are licensed, (2) properly remit all premiums, return premiums or refunds to their rightful owners, and (3) that they comply with all applicable insurance laws and regulations.

Paragraphs B and C of the proposed rule require the supervising agents to exert supervision and control over agents that they employ or contract with on their behalf. Paragraph B requires the supervising agent

to maintain and enforce working procedures and Paragraph C requires an annual review of the agent's accounts. These provisions are needed to implement paragraph A of this proposed rule.

4 MCAR § 1.9019 Suitability.

This proposed rule requires agents to have reasonable grounds for believing that the purchases of insurance they recommend to their customers are appropriate, or suitable, and to make reasonable inquiries to determine suitability. The duty to recommend suitable coverage stems directly from the statutory requirements of Minn. Stat. § 60A.17, subds. 6 and 6c(a)(9) that agents conduct their business in a competent and honest manner, while the requirement that agents make reasonable inquiries to determine suitability is necessary to effectuate the purposes of the rule. The rule recognizes agents' position of superior knowledge and the critical immportance of proper and adequate coverage to insurance consumers. A fire in the home, an automobile accident, a catastrphic illness or an untimely death can impose extreme financial and personal hardship on individuals who are not properly insured. Clearly, a person who holds herself/himself out as a licensed agent invites the public to rely on her/his expertise in the critical and often complicated area of deciding on insurance coverage.

The rule also recognizes that the most important factors in determining the appropriateness of a recommended purchase of insurance are the customer's need for insurance, her/his ability to pay, and the person's existing insurance program. Because other factors, in individual cases, may also bear on the suitability of a particular purchase, the rule does not limit the suitability inquiry to income, need and existing insurance alone.

The clearest illustration of the need for the rule can be found in the multitude of cases involving the sale of duplicative health and life insurance policies to senior citizens. Many senior citizens have been sold more than 30--in one case 72--health and life insurance policies within a period of a few years by agents who either knew that the sales were unnecessary and unconscionable or failed to inquire into their clients' incomes, needs and existing insurance programs.

To summarize, the duty to recommend suitable coverage, tailored to client needs, is a fundamental professional duty, flowing from the requirement that agents be competent and trustworthy. The proposed rule reflects the social and financial imporance of insurance protection, the superior knowledge and expertise of agents as opposed to their clients, and the reliance and trust which clients necessarily place on their agents' recommendations. The rule recognizes that consumers can be either underinsured or overinsured as a result of an agent's breach of professional duty. The rule will impose no more than the burdens of ordinary care already practiced by competent professionals.

4 MCAR § 1.9020 High standards of commercial honor.

Proposed Rule 4 MCAR § 1.9020 requires every agent to observe high standards of commercial honor and just and equitable principles in the conduct of her/his business. This rule succinctly and positively summarizes the professional standard expected of insurance agents in the course of their business and their dealings with the public. It restates affirmatively the standards expressed as prohibitions in Minn. Stat. § 60.17, subds. 6 and 6c, and provides a needed model for agent behavior.

4 MCAR § 1.9021 Registered office for resident agents.

Proposed Rule 4 MCAR § 1.9021 requires every agent who is licensed as a resident agent to maintain a registered office for service of process in this state and to specify the office address on all license applications and renewal applications. There is a special need for this rule since, pursuant to Minn. Stat. § 60A.17, subd. 1a(b)(1), a person may become a resident agent if she/he either has her/his principal place of business in this state, or if she/he is a "resident of a community or trade area, the border of which is continguous with the state line of this state...." Minn. Stat. § 60A.17, subd. 1a(c)(2) already requires agents licensed as nonresidents to appoint the Commissioner as agent for service of process. However, there is no similar statutory provision for residents, or for the special class of nonresident persons who are licensed as resident agents pursuant to Section 60A.17, subd. 1a(b)(1). Therefore, it is necessary for agents who qualify as and are licensed as resident agents, but who do not reside in Minnesota, to designate a registered office for service of process in the State of Minnesota. Clearly, a person who is licensed as a Minnesota resident agent submits to the Commissioner's jurisdiction, and must give the Commissioner and Minnesota residents a convenient means of serving legal process on them.

4 MCAR § 1.9022 License display and use.

Paragraph A of this proposed rule requires that an agent display her/his license(s) where the license(s) can be readily viewed and inspected by others. This rule will permit the agent's clients, and investigating authorities, to determine whether an individual is in fact properly licensed by the Commissioner.

Paragraph B of this proposed rule prohibits an agent from representing, either orally or in writing, that her/his status as licensee immplies some endorsement or sponsorship of the agent or her/his products by the State of Minnesota. An insurance agent's license merely gives a person the right to sell a particular line of insurance in the State of Minnesota. The Commissioner does not and cannot prefer, endorse or sponsor one agent or company over another. Some agents, however, have used their status as licensees to imply more than mere qualification to sell insurance, or have implied that the State affirmatively approves of their products. The proposed rule prohibits such representations, and to ensure that no confusing advertising is used, requires that references to licensure affirmatively disclaim any inference of endorsement or sponsorship of the licensee or its product by any agency of the State.

4 MCAR § 1.9023 Receipt of client funds.

Paragraph A of proposed 4 MCAR § 1.9023 states that an agent who receives insurance funds from his client holds those funds in a fiduciary capacity. In 1983 the legislature amended Minn. Stat. § 60A.17 by adding a new subdivision, effective August 1, 1983, requiring premiums received by agents to be deposited directly in a business account if the premiums are not forwarded directly to the designated insurer. See Minn. Laws 1983, ch. 263, § 4. The proposed rule further specifies the conduct expected of agents who accept premiums or other funds from their clients, the insurance consumers; it gives content and substance to the statutory language which prohibits an agent from unreasonably failing to pay over money he receives from a client in connection with an insurance transaction. See Minn. Stat. § 60A.17, subds. 6 and 6c(a)(5) and (9) (1982), as amended.

Insurance agents frequently receive, from their principals and clients, thousands of dollars each week, and hold the funds for a period of time. Unlike attorneys, real estate brokers and other professionals in similar positions of trust, however, insurance agents are not required to maintain trust accounts, and can and do commingle others' money with their general business and/or personal funds.

The term "fiduciary capacity" is defined, in pertinent part, by Black's Law Dictionary as follows:

> One is said to act in a "fiduciary capacity" or to receive money or contract a debt in a "fiduciary capacity", when the business which he transacts, or the money or property which he handles, is not his own or for his own benefit, but for the benefit of another person, as to whom he stands in a relation implying and necessitating great confidence and trust on the one part and a high degree of good faith on the other part...

Black's Law Dictionary (Revised Fourth Edition West 19). This definition accurately describes the Department's view of the proper role of an agent who receives client funds. Insurance consumers rely heavily on the expertise and honesty of their agents in selecting coverage, and must trust them to procure insurance and deal honestly and faithfully with their money.

In the normal course of business an agent receives premiums or other funds from a client and designates those funds as being for a particular insurance policy or company. The designation of an insurer is crucial, since it determines who, between the agent and the insurance company, is liable to the client for return of the premium or for provision of coverage. See e.g. Rommel v. New Brunswick Fire Ins. Co., 214 Minn. 251, 8 N.W.2d 29 (1943). See also Minn. Stat. § 72A.03 (1982) (a company whose agent fraudulently collects premiums is bound thereby). At the point when an agent does designate funds to a particular insurer, technical ownership of and liability for the funds passes to the insurer. Because in the vast

majority of cases agents do designate insurers, and do not receive unspecified funds belonging only to a client, paragraph B of proposed 4 MCAR § 1.9023, which requires monthly reporting of client funds held by the agent, has limited applicability and imposes little burden on agents. However, if a consumer has given an agent money with the expectation that the agent will procure coverage, or if an agent has received return premiums, refunds or other things of value on the client's behalf from an insurance company or another source, the consumer has the right to know what is being done with her/his money.

To summarize, the rule is needed to define the relationship between agent and client in those cases where agents hold client funds, clarify the statutory standard of care expected of agents in such cases, and increase the accountability of agents to their clients. The monthly statement will serve to remind agents of their duty to procure insurance or make refunds to the proper owners, give clients valuable records, and alert clients to any possible lack of coverage.

4 MCAR § 1.9024 Mandatory financial records of agents and agencies.

Proposed 4 MCAR § 1.9024 requires agents to keep detailed records of funds received from insurance consuemrs. As noted in discussion of the preceeding rule (Receipt of client funds), insurance agents, who are not required to keep trust accounts, receive large amounts of money from clients who rely on their agents to handle their money in an honest and professional manner. As a matter of basic good business practices most agents and agencies do keep records of the receipt and disbursement of their clients' funds. Too many, however, do not, or keep inadequate records, with the result that clients' funds are lost, agents lose control

of their expenditures and, in some cases, slide down the slippery slope of failing to remit newly collected premiums in order to cover past obligations. The lack of proper accounting for premiums results in coverage disputes, unnecessary litigation, and financial loss to the public both directly, through conversion of client funds by agents, and indirectly, through increased costs for insurance passed on to consumers by insurers who are obligated to provide coverage or make refunds despite their agents' failure to remit premiums. in addition, the failure to remit premiums and refunds has historically been the single most common cause of disciplinary action and criminal charges against agents. In many such cases, problems began not because of fraudulent design but because of simple poor bookkeeping.

There has heretofore been no regulation of the way agents handle client funds other than actions taken on a case by case basis against agents who "unreasonably failed to pay over premiums" within the meaning of Minn. Stat. § 60A.17, subd. 6 (1982). The proposed rule, like others addressed in this Statement of Need, is intended to establish professional norms and provide guidance as to what is considered "reasonable" handling of client money, and is needed to protect the public and effectuate and implement the purposes of the licensing statute.

Paragraph A, the substantive heart of the proposed rule, requires agents to keep records of funds received from their clients or for their clients. The records must specifically include the time, amount, source and deposit of the funds. In addition, the agent or agency must keep monthly balances for business accounts into which client funds are deposited, and maintain cash receipts and disbursement journals in accordance with generally accepted accounting principles. Paragraph A

also recognizes the unique status of "exclusive" or "captive" agents - i.e. agents who are employed by and sell for a single insurance company - and permits company personnel to maintain the required records.

Paragraph B futher specifies procedures for deposit of client funds into business accounts as required by Minn. Laws 1983, ch. 263, § 4. The availability of specific information, itemized by client and transaction, will permit agents, companies, consumers and the Department to trace funds, decreasing coverage and financial disputes and greatly facilitating law enforcement.

Paragraph C requires records to be maintained for at least six years, the general statute of limitations for contractual actions, and reminds agents that their financial records can be examined by the Commissioner pursuant to Minn. Stat. § 60A.031 (1982), as amended.

4 MCAR § 1.9025 Mandatory complaint records.

Proposed Rule 4 MCAR § 1.9025 requires every agent for herself/himself, and every agency for those agents under its supervision, to compile and maintain separate records of complaints made against each agent. Agents and agencies receive many complaints which the Commissioner does not. When the Commissioner has cause to investigate particular agents, the existence of individual complaint files will facilitate the administration and enforcement of the insurance agent licensing statute. The six-year maintenance requirement relates to the general statute of limitations for contractual and other actions.

4 MCAR § 1.9026 Termination of appointments or contracts.

Proposed Rule 4 MCAR § 1.9026 requires companies or agencies which terminate their agents based on complaints or allegations of misconduct to report the reason for the termination to the Commissioner within ten working days. The rule also prescribes the content of the termination report. Insurance companies and agencies can and should be primary sources of information about licensee misconduct. In the past, however, some companies have ignored their responsibility to report violations despite Minn. Stat. § 60A.17, subd. 5b which requires reporting of reasons for termination of appointments. Other companies and agencies have, for public relations or other reasons, engaged in what can only be described as coverups of patently criminal conduct by agents and former agents. The result has been that persons who were clearly unfit to be licensed, and posed a danger to the public, were permitted to continue in business. The proposed rule is necessary to protect the public from such agents and to effectuate the purpose of the licensing statute.

4 MCAR § 1.9027 Refunds.

Proposed Rule 4 MCAR § 1.9027 governs the handling of premium refunds; it requires an agent who receives a request for cancellation of an insurance policy to make the refund or initiate the cancellation and refund process within ten days of the agent's receipt of the request. The proposed rule further states that if the agent receives a refund for an insured she/he must deliver or mail the refund within five days after receipt. This section implements and further defines the requirement of Minn. Stat. 60A.17, subd. 6 (1982) which prohibits an agent from unreasonably failing to pay over to a policyholder any money the policyholder is entitled to.

Recent complaints and investigations reveal that some agents have failed to act on clients' refund and cancellation requests. By doing so, those agents have been able to keep policies in force and retain commissions which they did not earn. Thus, the requirement that an agent who receives a request for a cancellation must forward that request to the insurer so that the cancellation may be processed as soon as possible. Further, if an agent receives a refund for a policyholder, she/he must remit that money to the policyholder within five days. The reasonableness of the rule is clear in light of abuses and of existing laws pertaining to life and health insurance which require that consumers receive their refunds within ten days of request. See Minn. Stat. §§ 72A.51 and 72A.52 (1982).

4 MCAR § 1.9028 Insurance in connection with a loan.

Proposed Rule 4 MCAR § 1.9028 prohibits agents from misrepresenting the necessity for a client to purchase insurance in connection with a loan, or the terms of such insurance. Insurance obtained in connection with a loan, commonly referred to as "credit insurance", is regulated per se by Minn. Stat. ch. 62B (1982). Other statutes pertaining to financial institutions and insurance trade practices control whether and to what extent insurance can be required as a condition of obtaining a loan. See Minn. Stat. §§ 52.04, subd. 13; 56.155; 72A.31 (1982). The instant rule recognizes that agents employed by lenders are in a unique position to exert undue sales influence on borrowers to get them to purchase insurance as a condition for the granting of a loan. Abuses in the sale of credit insurance have been documented in numerous studies and reports, and have been the subject of many complaints to the Department. Accordingly, the

proposed rule is necessary to clarify the conduct expected of agents who seel credit insurance and to facilitate disciplinary action against violators.

4 MCAR § 1.90281 Penalties.

Minn. Stat. § 60A.17, subd. 6c(a)(3) (1982) makes the violation of any rule or order of the Commissioner grounds for disciplinary action against an agent's license. This proposed rule alerts affected persons to the potential consequences of violating any of the proposed rules.

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of Proposed Rules
Relating to Trade Conduct -
Agent Conduct

SUPPLEMENT TO
STATEMENT OF NEED
AND REASONABLENESS

These rules were promulgated because of the substantial volume of complaints in the area of Unfair Trade Practices and particularly insurance agent conduct.

The Notice of Intent to Solicit Outside Opinions Regarding Proposed Rules Relating to Insurance Agent Conduct was published in the July 11, 1983 State Register (8 S.R. 65). The proposed rules were published in the November 28, 1983 State Register (8 S.R. 1256).

After the Notice to Solicit Outside Opinions was published various industry groups, individual companies and other concerned parties contacted the Department in regard to the proposed rules. Certain of these parties indicated their desire to be involved in the development of the rules. Accordingly, once an initial draft of the rules was formulated by the Department it was circulated among the concerned parties. Some of the people and groups involved included the Insurance Federation of Minnesota, State Farm Insurance Companies, Blue Cross - Blue Shield, and the St. Paul Companies. The representatives of these entities provided comments and suggested changes through written comments and at various meetings regarding the rules, which continued until shortly before publication of the rules. Numerous changes were made in the rules as a result of those discussions. The changes, in some cases, adopted the suggestions made. In other instances, changes were made which were intended to address the concerns raised even if the changes were not exactly those suggested.

At the same time these discussions were occurring, a public information program was undertaken to make the rules known to the widest spectrum of persons possible. Press releases were issued which were reported in various newspapers in the State including the Minneapolis Star and Tribune. The news releases were provided to radio and television stations as well.

The same information was also provided to various industry groups who in turn alerted their members as to the rules.

During the same period, Commissioner Hatch met with various industry groups or spoke before them. At these times, he brought the rules to the attention of these groups.

The Department made every effort to give the fact of the promulgation of these rules and their content the broadest possible exposure. The exposure that they did receive far exceeds that received by rules in the normal rulemaking process.

The rules themselves are promulgated primarily for the benefit of those to whom the insurance is being sold. Their impact will be largely upon insurance companies that would not be considered small businesses pursuant to Minn. Laws 1983, ch. 188, codified as Minn. Stat. § 14.115. While it is possible that some of the entities, particularly individual agents, affected by the rules may come under the aforementioned definition, it was determined that since the intent of the rules was to protect the purchaser, their rights and expectations should not be affected because the party they were dealing with came within the definition of a small business. Upon review it was decided that there was no reasonable basis for setting different standards for small businesses that might be subject to these rules.

In the Matter of the Proposed Adoption of Rules Relating to Trade Conduct - Agent Conduct

CERTIFICATE OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, Thomas F. Pursell, do hereby declare that I have examined the rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedure Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed. Any exceptions are noted below.

Thomas F. Pursell
Special Assistant Attorney General

Dated: May 31, 1984

In the Matter of the Proposed Adoption of Rules Relating to Trade Conduct - Agent Conduct

AFFIDAVIT OF MAILING NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Debbi J. Lindlief, being first duly sworn, deposes and says:

That on the 30th day of May, 1984, in the City of St. Paul, County of Ramsey, State of Minnesota, he served the attached Notice of Submission to the Attorney General by depositing in the State of Minnesota Central Mail System for United States mailing at the City of St. Paul, a copy thereof, properly enveloped, with postage prepaid, to all persons and associations who requested notice that the rules in the above-entitled matter have been submitted to the Attorney General.

Debbi J. Lindlief

Subscribed and sworn to before me this 30th day of May, 1984.

Nancy I. Lisik

NANCY I. LISIK
NOTARY PUBLIC - MINNESOTA
HENNEPIN COUNTY
My Commission Expires Nov. 22, 1984

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of the Proposed Adoption of Rules Relating to Trade Conduct - Agent Conduct

NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

Pursuant to your request and in accordance with Minn. Stat. § 14.26:

PLEASE TAKE NOTICE that the above-captioned rules have been submitted to the Office of the Attorney General on this date, May 30, 1984, for review as to form and legality. Pursuant to Minn. Stat. § 14.26, the Attorney General will approve or disapprove the rules within 14 calendar days after receipt. If you desire to comment on the legality of the above-captioned rules, you should direct your comments to the Office of the Attorney General, G-25 State Administration Building, 50 Sherburne Avenue, St. Paul, Minnesota 55155, (612) 296-7030.

If you are interested in determining what changes, if any, were made in the proposed rules after publication in the State Register and before submission to the Attorney General, you may contact Debbi Lindlief, Department of Commerce, 500 Metro Square Building, St. Paul, Minnesota 55101.

Michael A. Hatch
Commissioner of Commerce

Notice of Submission to A.G.

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