

Chapter 3 Disciplinary & Industry Trends

Recent Violations & Enforcement Actions Of Florida Licensed Insurance Professionals

The following are instances in which licensees or other persons violated the Florida Insurance Code and the administrative action the Department has taken against them. Note: All administrative investigations are subject to referral to the Division of Insurance Fraud for criminal investigation.

Case: Investigators received a complaint from an insurance company alleging a health agent had failed to forward premiums paid by a commercial insured.

Investigators determined the agent was operating an insurance agency from her home and had only one client, a large petroleum hauler company. The agent billed premiums to the hauling company each month, which submitted premium checks payable to the agency. In an attempt to deflect suspicion, the agent intermittently remitted premiums to the insurer then skipped a few payments then start paying them again. This payment/non-payment cycle allowed her to conceal the theft for a period of time. Investigators proved the agent had withheld premium payments from the insurer 97 times over the course of several years, resulting in the misappropriation of \$62,826 in insurance premiums.

Disposition: The agent's and agency's licenses were revoked.

Case: The original source of the complaints against a life, health and variable annuity agent was a combination of referrals from the Department's Division of Consumer Services and another agent. The investigation included an agency inspection, agent and agency staff interviews, affidavits from consumers and meetings with the IRS investigative services division in Miami.

Investigators determined that over a period of months during open enrollment with the Affordable Care Act Marketplace (a/k/a "Obamacare"), the agent devised a unique way to increase sales - she stole the identities of numerous unsuspecting consumers from tax preparation services through a business owned by a family member. The agent then systematically enrolled the individuals in health insurance plans within the Marketplace without their knowledge or consent. The scheme began to unravel when the agent was identified as the producing agent for the fraudulent enrollments.

Disposition: Permanently barred.

Unauthorized Products & Entities Involved In Florida Commerce

Dental Care Alliance (DCA), LLC d/b/a Dentrte Dental Services, Sarasota, Florida Ordered to cease and desist from engaging in the unlicensed business of a discount medical plan organization. DCA offers its Dentrte discount dental plan via its website, www.dentrte.com. Dentrte's plan's participating providers include 4 dental practices which are located at a combined 25 locations in various cities throughout Florida. DCA has never been granted a license to operate in Florida as a discount medical plan organization. This is the second time that DCA has been sanctioned by the Office for engaging in the unlawful transaction of discount medical plans in the state of Florida.

Representing or aiding unauthorized insurer prohibited (Title XXXVII, § 626.901)

If an unauthorized insurer fails to pay in full or in part any claim or loss within the provisions of any insurance contract which is entered into in violation of this section, any person who knew or reasonably should have known that such contract was entered into in violation of this section and who solicited, negotiated, took application for, or effectuated such insurance contract is liable to the insured for the full amount of the claim or loss not paid.

Any insurance contract entered into in violation of this section shall be deemed to have been rendered invalid thereby.

New And Other Important Terminology Applicable To Florida Licensed Health Insurance Professionals

Definitions

"Accredited state" means a state in which the department or agency which regulates insurance has qualified as meeting the minimum financial regulatory standards adopted and established from time to time by the National Association of Insurance Commissioners (NAIC).

"Actuary" means a person who is a member in good standing of the American Academy of Actuaries.

"Administrator" is any person who directly or indirectly solicits or effects coverage of, collects charges or premiums from, or adjusts or settles claims on residents of this state in connection with authorized commercial self-insurance funds or with insured or self-insured programs which provide health insurance coverage or coverage of any other expenses described in § 624.33(1) or any person who, through a health care risk contract (as defined in § 641.234) with an insurer or health maintenance organization, provides billing and collection services to health insurers and health maintenance organizations on behalf of health care providers, other than any of the following persons:

- An employer or wholly owned direct or indirect subsidiary of an employer, on behalf of such employer's employees or the employees of one or more subsidiary or affiliated corporations of such employer.

- A union on behalf of its members.

- An insurance company which is either authorized to transact insurance in this state or is acting as an insurer with respect to a policy lawfully issued and delivered by such company in and pursuant to the laws of a state in which the insurer was authorized to transact an insurance business.

- A health care services plan, health maintenance organization, professional service plan corporation, or person in the business of providing continuing care, possessing a valid certificate of authority issued by the office, and the sales representatives thereof, if the activities of such entity are limited to the activities permitted under the certificate of authority.

- An entity that is affiliated with an insurer and that only performs the contractual duties, between the administrator and the insurer, of an administrator for the direct and assumed insurance business of the affiliated insurer. The insurer is responsible for the acts of the administrator and is responsible for providing all of the administrator's books and records to the insurance commissioner, upon a request from the insurance commissioner. For purposes of this paragraph, the term "insurer" means a licensed insurance company, health maintenance organization, prepaid limited health service organization, or prepaid health clinic.

- A nonresident entity licensed in its state of domicile as an administrator if its duties in this state are limited to the administration of a group policy or plan of insurance and no more than a total of 100 lives for all plans reside in this state.

- An insurance agent licensed in this state whose activities are limited exclusively to the

sale of insurance.

-A person licensed as a managing general agent in this state, whose activities are limited exclusively to the scope of activities conveyed under such license.

-A creditor on behalf of such creditors debtors with respect to insurance covering a debt between the creditor and its debtors.

-A trust and its trustees, agents, and employees acting pursuant to such trust established in conformity with 29 U.S.C. § 186.

-A trust exempt from taxation under § 501(a) of the Internal Revenue Code, a trust satisfying the requirements of §§ 624.438 and 624.439, or any governmental trust as defined in § 624.33(3), and the trustees and employees acting pursuant to such trust, or a custodian and its agents and employees, including individuals representing the trustees in overseeing the activities of a service company or administrator, acting pursuant to a custodial account which meets the requirements of § 401(f) of the Internal Revenue Code.

-A financial institution which is subject to supervision or examination by federal or state authorities or a mortgage lender licensed under chapter 494 who collects and remits premiums to licensed insurance agents or authorized insurers concurrently or in connection with mortgage loan payments.

-A credit card issuing company which advances for and collects premiums or charges from its credit card holders who have authorized such collection if such company does not adjust or settle claims.

-A person who adjusts or settles claims in the normal course of such person's practice or employment as an attorney at law and who does not collect charges or premiums in connection with health insurance coverage.

-A person approved by the department who administers only self-insured workers' compensation plans.

-A service company or service agent and its employees, authorized in accordance with §§ 626.895-626.899, serving only a single employer plan, multiple-employer welfare arrangements, or a combination thereof.

-Any provider or group practice (as defined in § 456.053), providing services under the scope of the license of the provider or the member of the group practice.

-Any hospital providing billing, claims, and collection services solely on its own and its physicians' behalf and providing services under the scope of its license.

"Affiliate" or "affiliated" means an entity or person who directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with a specified entity or person.

"Agent" means a health agent or all such agents, as indicated by context. The term "agent" includes an insurance producer or producer, but does not include a customer representative, limited customer representative, or service representative.

"Appointment" means the authority given by an insurer or employer to a licensee to transact insurance or adjust claims on behalf of an insurer or employer.

"Buyer's guide" means a document which shall contain all the requirements of, and which is in substantial compliance with these regulations.

"Control" or "controlled" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a contract for goods or nonmanagement services, or otherwise. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing 10 percent or more of the outstanding voting securities of any other person. No person shall be deemed to control another person solely by reason of being an officer or director of such other person.

"Controlled insurer" means a licensed insurer which is controlled, directly or indirectly, by a producer.

"Controlling producer" means a producer who, directly or indirectly, controls an insurer.

"Controlling person" means any person, firm, association, or corporation who directly or indirectly has the power to direct or cause to be directed, the management, control, or activities of the reinsurance intermediary.

"Customer representative" means an individual appointed by a general lines agent or agency to assist that agent or agency in transacting the business of insurance from the office of that agent or agency.

"Cash dividend" means the current illustrated dividend which can be applied toward payment of the gross premium.

"Diligent effort" means seeking coverage from and having been rejected by at least three authorized insurers currently writing this type of coverage and documenting these rejections. However, if the residential structure has a dwelling replacement cost of \$1 million or more, the term means seeking coverage from and having been rejected by at least one authorized insurer currently writing this type of coverage and documenting this rejection.

"Division" means the Division of Insurance Fraud of the Department of Financial Services. "Eligible surplus lines insurer" means an unauthorized insurer which has been made eligible by the office to issue insurance coverage under this Surplus Lines Law.

"Equivalent level annual dividend" is calculated by applying the following steps:

1. Accumulate the annual cash dividends at 5 percent interest compounded annually to the end of the 10th and the end of the 20th policy years.
2. Divide each accumulation of step 1. under this paragraph by an interest factor that converts it into one, equivalent level annual amount that, if paid at the beginning of each year, would accrue to the values in step 1. under this paragraph over the respective periods stipulated in step 1. under this paragraph. If the period is 10 years, the factor is 13.207; and if the period is 20 years, the factor is 34.719.
3. Divide the results of step 2. under this paragraph by the number of thousands of the equivalent level death benefits to arrive at the equivalent level annual dividend.

"Generic name" means a short title which is descriptive of the premium and benefit patterns of a policy or a rider.

"GAAP" means United States "generally accepted accounting principles" consistently applied.

"Generic name" means a short title which is descriptive of the premium and benefit patterns of a policy or a rider.

"General lines agent" means an agent transacting any one or more of the following kinds of insurance:

- Surety insurance.
- Health insurance, when transacted by an insurer also represented by the same agent as to property or casualty or surety insurance.

"Health agent" means an agent representing a health maintenance organization or, as to health insurance only, an insurer transacting health insurance.

"Holocaust victim" means any person who lost his or her life or property as a result of discriminatory laws, policies, or actions targeted against discrete groups of persons between 1920 and 1945, inclusive, in Nazi Germany, areas occupied by Nazi Germany, or countries allied with Nazi Germany.

"Home state" means the District of Columbia and any state or territory of the United States in which an agent maintains his or her principal place of residence or principal place of business and is licensed to act as an insurance agent.

"Insurance agency" means a business location at which an individual, firm, partnership, corporation, association, or other entity, other than an employee of the individual, firm, partnership, corporation, association, or other entity and other than an insurer as defined by § 624.03, engages in any activity or employs individuals to engage in any activity which by law may be performed only by a licensed insurance agent.

"Insurance policy" or "insurance contract" (1) means a written contract of, or a written agreement for or effecting, insurance, or the certificate thereof, by whatever name called, and includes all clauses, riders, endorsements, and papers which are a part thereof; (2)

"Insurance policy" means, but is not limited to, life insurance, property insurance, or education policies.

"Insurer" means (1) any person duly licensed in this state pursuant to the applicable provisions of the Florida Insurance Code as an insurer; (2) "Insurer" includes an authorized commercial self-insurance fund and includes any person undertaking to provide health insurance coverage or coverage of any of the other expenses (described in § 624.33(1)).

"Legal relationship" means any parent, subsidiary, or affiliated company with an insurer doing business in this state.

"License" means a document issued by the department or office authorizing a person to be appointed to transact insurance or adjust claims for the kind, line, or class of insurance identified in the document.

"Licensed insurer" or "insurer" means any person, firm, association, or corporation licensed to transact business in this state. The following are not licensed insurers any risk retention group as defined in the Superfund Amendments Reauthorization Act of 1986,; The Risk Retention Act, any residual market pool or joint underwriting authority or association; and any captive insurance company (defined in s. 628.901).

"Line of authority" means a kind, line, or class of insurance an agent is authorized to transact.

"Managing general agent" means any person managing all or part of the insurance business of an insurer, including the management of a separate division, department, or underwriting office, and acting as an agent for that insurer, whether known as a managing general agent, manager, or other similar term, who, with or without authority, separately or together with affiliates, produces directly or indirectly, or underwrites an amount of gross direct written premium equal to or more than 5 percent of the policyholder surplus as reported in the last annual statement of the insurer in any single quarter or year and also does one or more of the following:

- Adjusts or pays claims.
- Negotiates reinsurance on behalf of the insurer. The following persons shall not be considered managing general agents:
 - An employee of the insurer.
 - A United States manager of the United States branch of an alien insurer.
 - An underwriting manager managing all the insurance operations of the insurer pursuant to a contract, who is under the common control of the insurer subject to regulations (under §§ 628.801-628.803), and whose compensation is not based on the volume of premiums written.
 - Administrators as defined by these regulations (§ 626.88).
 - The attorney in fact authorized by and acting for the subscribers of a reciprocal insurer under powers of attorney.

"Person" means any individual, corporation, association, partnership, reciprocal exchange, inter-insurer, Lloyd's insurer, fraternal benefit society, or business trust or any entity involved in the business of insurance.

"Policy summary" means a written statement describing the elements of the policy, including, but not limited to, the name and address of the insurance agent or, if no agent is involved, a statement of the procedure to be followed in order to receive responses to inquiries regarding the policy summary;

"Producer" means an agent, broker, or reinsurance intermediary licensed pursuant to the applicable provision of the Florida Insurance Code; also "Producer" means an insurance agent or agents or any other person who, for any compensation, commission, or other thing of value, acts or aids in any manner in soliciting, negotiating, or procuring the making of any insurance contract on behalf of an insured other than the person.

"Qualified United States financial institution" means an institution that:

- Is organized or, in the case of a United States office of a foreign banking organization, licensed under the laws of the United States or any state thereof;
- Is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies; and
- Has been determined by the department or the Securities Valuation Office of the National Association of Insurance Commissioners to meet the standards of financial condition and standing that are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the department.

"Reinsurance intermediary" means a reinsurance intermediary broker or a reinsurance intermediary manager.

"Reinsurance intermediary broker" means any person, other than an officer or employee of the ceding insurer, who solicits, negotiates, or places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority or power to bind reinsurance on behalf of the ceding insurer.

"Reinsurer" means any person duly licensed in this state pursuant to the applicable provisions of the Florida Insurance Code as an insurer with the authority to assume reinsurance.

"Reinsurance intermediary manager" means any person who has authority to bind, or manages all or part of, the assumed reinsurance business of a reinsurer, including the management of a separate division, department, or underwriting office, and acts as an agent for the reinsurer whether known as a reinsurance intermediary manager, manager, or other similar term. Notwithstanding the above, none of the following persons is a reinsurance intermediary manager with respect to the reinsurer for the purposes of this section:

- An employee of the reinsurer;
- A manager of the United States branch of an alien reinsurer;
- An underwriting manager which, pursuant to contract, manages all the reinsurance operations of the reinsurer, is under common control with the reinsurer, subject to the holding company act, and whose compensation is not based on the volume of premiums written.
- The manager of a group, association, pool, or organization of insurers which engage in joint underwriting or joint reinsurance and who are subject to examination by the insurance regulatory authority of the state in which the manager's principal business office is located.

"Resident" means an individual whose home state is the State of Florida.

"Surplus lines agent" means an individual licensed as provided in this part to handle the placement of insurance coverages with unauthorized insurers and to place such coverages with authorized insurers as to which the licensee is not licensed as an agent.

"To export" means to place, in an unauthorized insurer under this Surplus Lines Law, insurance covering a subject of insurance resident, located, or to be performed in this state.

"Violation" means (in re Surplus Lines) failure by the reinsurance intermediary, insurer, or reinsurer for whom the reinsurance intermediary was acting to substantially comply with the provisions of this section.