

BEFORE THE DIVISION OF INSURANCE

STATE OF COLORADO

FINAL AGENCY ORDER O-03-097

**IN THE MATTER OF THE MARKET CONDUCT EXAMINATION OF AMERICAN
FAMILY MUTUAL INSURANCE COMPANY,**

Respondent

THIS MATTER comes before the Colorado Commissioner of Insurance (the "Commissioner") as a result of a market conduct examination conducted by the Colorado Division of Insurance (the "Division") of American Family Mutual Insurance Company (the "Respondent"), pursuant to §§ 10-1-201 to 207, C.R.S. The Commissioner has considered and reviewed the market conduct examination report dated July 26, 2002 (the "Report"), relevant examiner work papers, all written submissions and rebuttals, and the recommendations of staff. The Commissioner finds and orders as follows:

FINDINGS OF FACT

1. At all relevant times, the Respondent was a corporation licensed by the Division to conduct all lines of property and casualty insurance.
2. In accordance with §§ 10-1-201 to 207, C.R.S., on July 26, 2002, the Division completed a market conduct examination of the Respondent. The period of examination was July 1, 2000 to June 30, 2001.
3. In scheduling the market conduct examination and in determining its nature and scope, the Commissioner considered such matters as complaint analyses, underwriting and claims practices, pricing, product solicitation, policy form compliance, market share analyses, and other criteria as set forth in the most recent available edition of the examiners' handbook adopted by the National Association of Insurance Commissioners, as required by § 10-1-203(1), C.R.S.
4. In conducting the examination, the examiners observed those guidelines and procedures set forth in the most recent available edition of the examiners' handbook adopted by the National Association of Insurance Commissioners and the Colorado insurance examiners handbook. The Commissioner also employed other guidelines and procedures that she deemed appropriate, pursuant to § 10-1-204(1), C.R.S.

5. The market conduct examiners prepared the Report. The Report is comprised of only the facts appearing upon the books, records, or other documents of the Respondent, its agents or other persons examined, or as ascertained from the testimony of the Respondent's officers or agents or other persons examined concerning Respondent's affairs. The Report contains the conclusions and recommendations that the examiners find reasonably warranted based upon the facts.
6. Respondent delivered to the Division written submissions and rebuttals to the Report.
7. The Commissioner has fully considered and reviewed the Report, all of Respondent's submissions and rebuttals, and all relevant portions of the examiner's work papers.

CONCLUSIONS OF LAW AND ORDER

8. Unless expressly modified in this Final Agency Order (the "Order"), the Commissioner adopts the facts, conclusions and recommendations contained in the Report. A copy of the Report is attached to the Order and is incorporated by reference.
9. Issue A concerns the following violation: Failure to provide a Cost Containment Option form signed by the insured when the insured chooses the AutoMed option. The Respondent shall ensure that it will retain the Cost Containment Option form signed by an insured whenever the insured chooses a Cost Containment Option in accordance with Colorado insurance law. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning this violation.
10. Issue B concerns the following violation: Failure to publish underwriting rules that comply with Colorado insurance laws. The Respondent shall provide written procedures to the Division that ensure that it will only publish underwriting rules in accordance with Colorado insurance law.
11. Issue C concerns the following violation: Failure of Respondent's rate and rule filings and endorsements to comply with Colorado's Personal Injury Protection (PIP) laws. The Respondent shall provide written procedures that ensure that it will make rate and rule filings and publish endorsements in accordance with Colorado insurance law.
12. Issue D concerns the following violation: The Respondent certifies PIP Option Endorsement that does not comply with Colorado insurance law. The Respondent shall provide corrected forms and procedures that ensure that it will only certify forms and endorsements that comply with Colorado insurance law.

13. Issue E concerns the following violation: Failure to provide proofs of mailing for notices of cancellation or non-renewal sent to Colorado insureds. The Respondent shall provide written procedures that ensure that it will maintain proofs of mailing for cancellations and non-renewals sent to Colorado insureds. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning this violation.
14. Issue F concerns the following violation: Failure to use correct rating elements and rules filed with DOI when rating policies written in Colorado. The Respondent shall provide written procedures that ensure it will use correct rating elements when rating policies for Colorado insureds.
15. Issue G concerns the following violation: Failure to make PIP benefit payments within the time period required by Colorado insurance law. The Respondent shall provide written evidence that it has implemented procedures to make timely payment of PIP benefits in accordance with Colorado insurance law. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning this violation.
16. Issue H concerns the following violation: Failure to notify providers and claimants in writing of the reason why a provider's claim was not paid within thirty (30) days of receipt of all documents that are required for payment of PIP benefits. The Respondent shall provide evidence that it has implemented a procedure in which providers and claimants will be notified in writing of the reason(s) why the claim was not paid within thirty (30) days in accordance with Colorado insurance law. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning this violation.
17. Issue I concerns the following violation: Failure to maintain records required when writing private passenger automobile policies in Colorado. The Respondent shall provide evidence demonstrating it has instituted procedures to maintain proper claims files documentation to enable the Division to determine compliance with Colorado insurance law. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning this violation.
18. Pursuant to § 10-1-205(3)(d), C.R.S., Respondent shall pay a civil penalty to the Division in the amount of seven thousand five hundred and 00/100 dollars (\$7,500.00) for the cited violations of Colorado law. This fine was calculated in accordance with Division guidelines for assessing penalties and fines, including Division bulletin no. 1-98, issued on January 1, 1998.
19. Pursuant to § 10-1-205(4)(a), C.R.S., within sixty (60) days of the date of this Order, the Respondent shall file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted report and related orders.

20. Unless otherwise specified in this Order, all requirements with this Order shall be completed within thirty (30) days of the date of this Order. Respondent shall submit written evidence of compliance with all requirements to the Division within the thirty (30) day time frame, except where Respondent has already complied, as specifically noted in the Order. Copies of any rate and form filings shall be provided to the rate and forms section with evidence of the filings sent to the market conduct section. All audits shall be performed in accordance with Division guidelines. All audit reports must be received within ninety (90) days of the Order, with a summary of the findings, including all monetary payments to covered persons.
21. This Order shall not prevent the Division from commencing future agency action relating to conduct of the Respondent not specifically addressed in the Report, not resolved according to the terms and conditions in this Order, or occurring before or after the examination period. Failure by the Respondent to comply with the terms of this Order may result in additional actions, penalties and sanctions as provided for by law.
22. Copies of the examination report, the Respondent's response, and this final Order will be made available to the public no earlier than thirty (30) days after the date of this Order, subject to the requirements of § 10-1-205, C.R.S.

WHEREFORE: It is hereby ordered that the findings and conclusions contained in the final examination report dated July 26, 2002, are hereby adopted and filed and made an official record of this office and the above Order is hereby approved this 18th day of November, 2002.



M. Michael Cooke
Acting Commissioner of Insurance