

BEFORE THE DIVISION OF INSURANCE

STATE OF COLORADO

FINAL AGENCY ORDER O-04-159

**IN THE MATTER OF THE MARKET CONDUCT EXAMINATION OF
AMERICAN REPUBLIC 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 Republic 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 November 21, 2003 (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 licensed by the Division as a life and health insurance company.
2. In accordance with §§ 10-1-201 to 207, C.R.S., on November 21, 2003, the Division completed a market conduct examination of the Respondent. The period of examination was January 1, 2002 to December 31, 2002.
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 he deemed appropriate, pursuant to § 10-1-204(1), C.R.S.

5. The market conduct examiners prepared a 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, any and 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 A1 concerns the following violation: Certifying and using forms that do not comply with Colorado insurance law. The Respondent shall provide evidence that it established procedures to ensure that policy forms issued or delivered to Colorado insureds comply with statutory mandates as certified by an officer of Respondent in compliance with Colorado insurance law. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
10. Issue E1 concerns the following violation: Failure to include a complete description of the independent external review procedures in or attached to the policy. The Respondent shall provide evidence that a complete description of independent external review procedures is in or attached to all health coverage plan materials dealing with grievance issues to ensure compliance with Colorado insurance law. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
11. Issue E2 concerns the following violation: Failure to reflect only allowable reasons for non-renewal of plans. The Respondent shall provide evidence that it revised its individual policy forms to reflect only allowable reasons for non-renewal of plans to ensure compliance with Colorado insurance law. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.

12. Issue E3 concerns the following violation: Failure of the forms to provide benefits for covered services based on a provider's status as a family member. The Respondent shall provide evidence that it revised all affected forms to reflect that benefits may not be denied solely based on a provider's status as a family member to ensure compliance with Colorado insurance law. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
13. Issue E4 concerns the following violation: Failure to reflect correct information in a policy provision required for individual policies. The Respondent shall provide evidence that it revised all applicable forms to ensure that the required provision concerning 'Proofs of Loss' is in compliance with Colorado insurance law. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
14. Issue E5 concerns the following violation: Failure to reflect required information in application and notice forms concerning replacement of accident and sickness coverage. The Respondent shall provide evidence that it revised all affected forms to include the required information regarding replacement of coverage to ensure compliance with Colorado insurance law.
15. Issue E6 concerns the following violation: Failure to reflect a correct definition of a Business Group of One in an applicant disclosure form. The Respondent shall provide evidence that it revised all applicable forms to reflect the correct definition of a Business Group of One to ensure compliance with Colorado insurance law. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
16. Issue E7 concerns the following violation: Failure to reflect correct or complete information in the CoverColorado notice form. The Respondent shall provide evidence that it revised its CoverColorado standardized notice form to reflect correct and complete elements of notification to ensure compliance with Colorado insurance. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
17. Issue E8 concerns the following violation: Failure to reflect correct and complete coverage to be provided for home health care services. The Respondent shall revise its policy forms and endorsements to correctly and completely describe the coverage provided for home health care services to ensure compliance with Colorado insurance law. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.

18. Issue E9 concerns the following violation: Failure to reflect correctly and completely the extent of coverage to be provided for hospice care services. The Respondent shall provide evidence that it revised all applicable forms and endorsements to reflect the correct and complete extent of coverage required for hospice care to ensure compliance with Colorado insurance law.
19. Issue E10 concerns the following violation: Failure to disclose the mandated hospitalization and general anesthesia benefit for dental procedures for dependent children. The Respondent shall provide evidence that it revised its policy forms to disclose the mandated hospitalization and general anesthesia benefit concerning dental procedures for dependent children to ensure compliance with Colorado insurance law. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
20. Issue E11 concerns the following violation: Failure to reflect that repairs and replacement of prosthetic devices, unless due to misuse or loss, are to be covered. The Respondent shall provide evidence that it revised its policy forms to reflect repairs and replacements of prosthetic devices are covered, unless misused or lost, to ensure compliance with Colorado insurance law. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
21. Issue E12 concerns the following violation: Failure to reflect complete mandated preventive child health supervision service benefits. The Respondent shall provide evidence that it revised its child health supervision services benefits endorsement to reflect complete mandated coverages and related information to ensure compliance with Colorado insurance law. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
22. Issue E13 concerns the following violation: Failure to reflect an accurate or complete description of the mandated therapies for congenital defects and birth abnormalities for children. The Respondent shall provide evidence that it revised its policies and endorsements to reflect an accurate and complete description of the mandated therapies for congenital defects and birth abnormalities in children to ensure compliance with Colorado insurance law. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
23. Issue E14 concerns the following violation: Failure to provide coverage for routine hospital nursery care for newborns. The Respondent shall provide evidence that it revised its policies to reflect the required hospital stay coverage for newborns to ensure compliance with Colorado insurance law.

The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.

24. Issue E15 concerns the following violation: Failure to reflect an accurate description of the mandated coverage for prostate cancer screening. The Respondent shall provide evidence that it revised its policy forms to reflect an accurate and non-contradictory description of the mandatory coverage provided for prostate cancer screening to ensure compliance with Colorado insurance law. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
25. Issue E16 concerns the following violation: Failure to reflect correct benefits for mammography screening. The Respondent shall provide evidence that it revised its policy forms and amending endorsements to reflect correct and complete benefits for the mandated coverage of mammography screening to ensure compliance with Colorado insurance law.
26. Issue F1 concerns the following violation: Failure, in some instances, to use the rates filed with the Division. The Respondent shall provide evidence that it established procedures to ensure that filed rates are used for both new and renewal business as of the effective date stated in its filings in compliance with Colorado insurance law. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
27. Issue H1 concerns the following violation: Failure to provide CoverColorado notice forms in all required instances. The Respondent shall provide evidence that it established procedures to ensure notice forms for CoverColorado are provided in all required instances in compliance with Colorado insurance law. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
28. Issue H2 concerns the following violation: Failure, in some cases, to issue certificates of creditable coverage. The Respondent shall provide evidence that it established procedures to ensure that certificates of creditable coverage are issued to all employees terminating medical coverage in compliance with Colorado insurance law. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
29. Issue H3 concerns the following violation: Failure, in some instances, to use non-discriminatory practices and use of unfair claim settlement practices in some instances involving rescission of coverage. The Respondent shall provide evidence that it established procedures to ensure that it does not discriminate in claim settlement practices involving

rescinding coverage in compliance with Colorado insurance law. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.

30. Issue J1 concerns the following violation: Failure, in some cases, to pay, deny or settle claims within the time periods required by Colorado insurance law. The Respondent shall provide evidence that it corrected its procedures to ensure that all clean electronic claims are paid, denied or settled within the required time periods in compliance with Colorado insurance law. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
31. Issue J2 concerns the following violation: Failure to accurately determine the number of days utilized for claim processing. The Respondent shall provide evidence that it established the necessary procedures to accurately determine the number of days used to process claims to ensure compliance with Colorado insurance law.
32. Issue J3 concerns the following violation: Failure, in some instances, to pay late payment penalties on claims. The Respondent shall provide evidence that it established procedures to ensure that late payment penalties are paid in all applicable instances in compliance with Colorado insurance law. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
33. Issue J4 concerns the following violation: Failure to have available a mechanism for providers to confirm receipt of a claim or to determine if resubmission of a claim is necessary. The Respondent shall provide evidence that it established procedures to ensure that a mechanism is in place enabling providers to confirm receipt of a claim or determine if resubmission is necessary in compliance with Colorado insurance law. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
34. Issue K1 concerns the following violation: Failure to reflect correct or complete information for second level appeals or external review rights. The Respondent shall provide evidence that it established procedures to ensure that correct and complete information is provided to insureds concerning second level utilization review appeals and external review rights in compliance with Colorado insurance law.
35. Issue K2 concerns the following violation: Failure to include all required information in notification letters for first level appeal determinations. The Respondent shall provide evidence that it established procedures to ensure that notification letters for first level appeal reviews contain all required information in compliance with Colorado insurance law.

36. Pursuant to § 10-1-205(3)(d), C.R.S, the Respondent shall pay a civil penalty to the Division in the amount of twenty-six thousand and no/100 dollars (\$26,000.00). This fine represents a combined fine 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.
37. 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 order.
38. 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. Unless otherwise specified in this Order, 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.
39. 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.
40. 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 November 21, 2003, are hereby adopted and filed and made an official record of this office, and the above Order is hereby approved this 12th day of March, 2004.

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean
Commissioner of Insurance

CERTIFICATE OF MAILING

I hereby certify that on the 12th day of March, 2004, I deposited the within **FINAL AGENCY ORDER NO. O-04-159 IN THE MATTER OF THE MARKET CONDUCT EXAMINATION OF AMERICAN REPUBLIC INSURANCE COMPANY**, in the United States Mail with postage affixed and addressed to:

Michael E. Abbott, President
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