

**REPORT OF  
MARKET CONDUCT EXAMINATION  
OF**

**CONTINENTAL LIFE INSURANCE COMPANY  
OF BRENTWOOD, TENNESSEE**  
Brentwood, Tennessee

**AS OF  
April 29, 2009**

**COMMONWEALTH OF PENNSYLVANIA**



**INSURANCE DEPARTMENT  
BUREAU OF MARKET CONDUCT**

**Issued: June 23, 2009**

**CONTINENTAL LIFE INSURANCE COMPANY OF  
BRENTWOOD, TENNESSEE**

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BEFORE THE INSURANCE COMMISSIONER  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

ORDER

AND NOW, this 22<sup>ND</sup> day of July, 2008, in accordance with Section 905(c) of the Pennsylvania Insurance Department Act, Act of May 17, 1921, P.L. 789, as amended, P.S. § 323.5, I hereby designate Ronald A. Gallagher, Deputy Insurance Commissioner, to consider and review all documents relating to the market conduct examination of any company and person who is the subject of a market conduct examination and to have all powers set forth in said statute including the power to enter an Order based on the review of said documents. This designation of authority shall continue in effect until otherwise terminated by a later Order of the Insurance Commissioner.



  
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Joel S. Ario  
Insurance Commissioner

BEFORE THE INSURANCE COMMISSIONER  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

IN RE: : VIOLATIONS:  
: :  
CONTINENTAL LIFE INSURANCE : Section 671-A of Act 147 of 2002  
COMPANY OF BRENTWOOD, TN : (40 P.S. § 310.71)  
101 Continental Place :  
Brentwood, TN 37027 : Sections 354 and 404-A of the  
: Insurance Company Law, Act of  
: May 17, 1921, P.L. 682, No. 284  
: (40 P.S. §§ 477b and 625-4)  
: :  
: Title 31, Pennsylvania Code, Sections  
: 81.5(b), 81.6(a)(1), 81.6(a)(2)(ii),  
: 81.6(c), 83.3, 83.55(a), (b) and (c),  
: 88.102, 89.783, 146.3, 146.5, 146.6  
: and 146.7  
: :  
Respondent. : Docket No. MC09-06-006

CONSENT ORDER

AND NOW, this *23<sup>RD</sup>* day of *JUNE*, 2009, this Order is hereby issued by the Insurance Department of the Commonwealth of Pennsylvania pursuant to the statutes cited above and in disposition of the matter captioned above.

1. Respondent hereby admits and acknowledges that it has received proper notice of its rights to a formal administrative hearing pursuant to the Administrative Agency Law, 2 Pa.C.S. § 101, et seq., or other applicable law.

2. Respondent hereby waives all rights to a formal administrative hearing in this matter, and agrees that this Consent Order shall have the full force and effect of an order duly entered in accordance with the adjudicatory procedures set forth in the Administrative Agency Law, supra, or other applicable law.

### FINDINGS OF FACT

3. The Insurance Department finds true and correct each of the following Findings of Fact:

- (a) Respondent is Continental Life Insurance Company of Brentwood, TN, and maintains its address at 101 Continental Place, Brentwood, TN 37027.
- (b) A market conduct examination of Respondent was conducted by the Insurance Department covering the period from July 1, 2007 to June 30, 2008.
- (c) On April 29, 2009 , the Insurance Department issued a Market Conduct Examination Report to Respondent.
- (d) A response to the Examination Report was provided by Respondent on May 29, 2009.
- (e) The Examination Report notes violations of the following:

- (i) Section 671-A of Act 147 of 2002 (40 P.S. § 310.71), which prohibits producers from transacting business within this Commonwealth without written appointment as required by the Act;
- (ii) Section 354 of the Insurance Company Law (40 P.S. § 477b), which prohibits issuing, selling, or disposing of any policy, contract or certificate until the forms have been submitted to, and formally approved by, the Insurance Commissioner;
- (iii) Section 404-A of the Insurance Company Law, No. 284 (40 P.S. §625-4), which requires when the individual policy or annuity is delivered to the policyholder by the producer by hand, a delivery receipt shall be used. This receipt must be in at least a duplicate set and state the date the policy or annuity was received by the policyholder. The receipt date shall be the date on which the policyholder and producer sign the delivery receipt, and such date shall commence any applicable policy or annuity examination period. Copies of the delivery receipt must be provided to the policyholder on the date of policy or annuity delivery and to the issuing insurer. When the individual policy or annuity is delivered by a means other than by hand-delivery by the producer, the insurer shall establish appropriate means of verifying delivery by the producer of the policy or annuity and of establishing the date from which any applicable policy or examination period shall commence;

- (iv) Title 31, Pennsylvania Code, Section 81.5(b), which requires the insurer, as part of a completed application for life insurance or annuity, require a statement signed by the applicant regarding whether the proposed insurance or annuity will replace existing life insurance or annuity;
  
- (v) Title 31, Pennsylvania Code, Section 81.6(a)(1), which requires an insurer that uses an agent or broker in a life insurance or annuity sale shall require with or as part of a completed application for life insurance or annuity, a statement signed by the agent or broker regarding whether the broker knows replacement is or may be involved in the transaction;
  
- (vi) Title 31, Pennsylvania Code, Section 81.6(a)(2)(ii), which states an insurer that uses an agent or broker in a life insurance or annuity sale shall, if replacement is involved: Send to each existing insurer a written communication advising of the replacement or proposed replacement and the identification information obtained under subparagraph (I) and in the case of life insurance, the disclosure statement as required by Section 83.3, or ledger statement containing comparable policy data on the proposed life insurance. This written communication shall be made within 5 working days of the date the application is received in the replacing insurer's home or regional office, or the date the proposed policy or contract is issued, whichever is sooner;

- (vii) Title 31, Pennsylvania Code, Section 81.6(c), which requires the replacing insurer to maintain evidence of the Notice Regarding Replacement of Life Insurance and Annuities;
- (viii) Title 31, Pennsylvania Code, Section 83.3, which requires written disclosure. A life insurance agent, broker or insurer soliciting the type of business to which this subchapter applies shall provide a prospective purchaser with a written disclosure statement clearly labeled as such;
- (ix) Title 31, Pennsylvania Code, Sections 83.55(a) and (b), which state: (a) The Surrender Comparison Index Disclosure shall be given as a separate document upon delivery of the policy or earlier if requested by the life insurance applicant. If requested earlier, the index disclosure shall be provided as soon as reasonably possible; and (b) A disclosure that is minimally satisfactory to the Insurance Department is set forth in Appendix B. If the Appendix B disclosure will be used, a letter to that effect, prior to use, is adequate notification to the Department for review prior to use;
- (x) Title 31, Pennsylvania Code, Section 83.55c, which states if it is the practice of the insurer to mail the policy directly to the applicant, the appropriate officer of the insurer shall certify, in conjunction with the annual statement of the insurer, that in accordance with this subchapter, surrender comparison index disclosures have been included with policies at delivery or provided

earlier upon request. Failure to so certify shall constitute *prima facie* evidence that surrender comparison index disclosures have not been provided to prospective purchasers of life insurance;

- (xi) Title 31, Pennsylvania Code, Section 88.102, which states upon determining that a sale will involve replacement, an insurer, other than a direct response insurer or its agent, shall furnish the applicant at the time of completing the application, the notice described in §88.103 of this title, relating to notice form. One copy of the notice shall be furnished to the applicant and an additional copy signed by the applicant shall be retained by the insurer;
  
- (xii) Title 31, Pennsylvania Code, Section 89.783(a), relating to general rules:
  - (6) Issuers of accident and sickness policies or certificates which provide hospital or medical expense coverage on an expense-incurred or indemnity basis to a person eligible for Medicare, shall provide to these applicants a guide to Health Insurance for People with Medicare in the form developed jointly by the NAIC and the Health Care Financing Administration, and in a type size no smaller than 12-point type. Delivery of the Guide shall be made whether or not these policies or certificates are advertised, solicited, or issued as Medicare supplement policies or certificates as defined in this subchapter. Except in the case of direct response issuers, delivery of the Guide shall be made to the applicant at the time of application and acknowledgment of receipt of the Guide shall be obtained by the issuers. Direct response issuers

Direct response issuers shall deliver the Guide to the applicant upon request but not later than at the time the policy is delivered;

(xiii) Title 31, Pennsylvania Code, Section 89.783(d), regarding outline of coverage requirements for Medicare supplement policies: (1) Issuers shall provide an outline of coverage to applicants at the time the application is presented to the prospective applicant and, except for direct response policies, shall obtain an acknowledgement of receipt of the outline from the applicant; and (2) If an outline of coverage is provided at the time of application and the Medicare supplement policy or certificate is issued on a basis which would require revision of the outline, a substitute outline of coverage properly describing the policy or certificate shall accompany the policy or certificate when it is delivered and contain the following statement, in no less than 12 point type, immediately above the company name: "NOTICE: Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon application and the coverage originally applied for has not been issued."

(xiv) Title 31, Pennsylvania Code, Section 146.3, which requires the claim files of the insurer shall be subject to examination by the Commissioner or by his appointed designees. The files shall contain notes and work papers pertaining to the claim in the detail that pertinent events and the dates of the events can be reconstructed;

- (xv) Title 31, Pennsylvania Code, Section 146.5, which requires every insurer, upon receiving notification of a claim, shall within 10 working days, acknowledge the receipt of such notice unless payment is made within such period of time. If an acknowledgement is made by means other than writing, an appropriate notation of such acknowledgement shall be made in the claim file of the insurer and dated;
  
- (xvi) Title 31, Pennsylvania Code, Section 146.6 states that if an investigation cannot be completed within 30 days, and every 45 days thereafter, the insurer shall provide the claimant with a reasonable written explanation for the delay and state when a decision on the claim may be expected; and
  
- (xvii) Title 31, Pennsylvania Code, Section 146.7, which requires within 15 working days after receipt by the insurer of properly executed proof of loss, the first party claimant shall be advised of the acceptance or denial of the claim by the insurer.

#### CONCLUSIONS OF LAW

4. In accord with the above Findings of Fact and applicable provisions of law, the Insurance Department makes the following Conclusions of Law:

- (a) Respondent is subject to the jurisdiction of the Pennsylvania Insurance Department.
- (b) Respondent's violations of Section 671-A of Act 147 of 2002 are punishable by the following, under Section 691-A of Act 147 of 2002 (40 P.S. § 310.91):
- (i) suspension, revocation or refusal to issue the certificate of qualification or license;
  - (ii) imposition of a civil penalty not to exceed five thousand dollars (\$5,000.00) for every violation of the Act;
  - (iii) an order to cease and desist; and
  - (iv) any other conditions as the Commissioner deems appropriate.
- (c) Respondent's violation of Section 354 of The Insurance Company Law is punishable by the following, under Section 354 of The Insurance Company Law (40 P.S. § 477b):
- (i) suspension or revocation of the license(s) of Respondent;
  - (ii) refusal, for a period not to exceed one year thereafter, to issue a new license to Respondent;
  - (iii) imposition of a fine of not more than one thousand dollars (\$1,000.00) for each act in violation of the Act.

(d) Respondent's violations of Section 404-A of the Insurance Company Law, No. 284 (40 P.S. §625-4 are punishable by the following, under 40 P.S. § 625-10:

Upon determination by hearing that this act has been violated, the commissioner may issue a cease and desist order, suspend, revoke or refuse to renew the license, or impose a civil penalty of not more than \$5,000 per violation.

(e) Respondent's violations of Title 31, Pennsylvania Code, Chapter 81, are punishable under Title 31, Pennsylvania Code, Section 81.8(b) and

(c), which provide failure to comply, after a hearing, may subject a company to penalties provided in 40 P.S. § 475. Failure to comply shall be considered a separate violation and may not be considered in lieu of a proceeding against the company for a violation of 40 P.S. §§472, 473 or 474. In addition, failure to make the disclosure may be considered a violation of the Unfair Insurance Practices Act (40 P.S. §§ 1171.1 to 1171.15);

(f) Respondent's violations of Title 31, Pennsylvania Code, Chapter 83 are punishable under Title 31, Pennsylvania Code, Section 83.6:

(i) For failing to insure adequate disclosure of basic information, after a hearing, a company may be subject to the penalties provided under

40 P.S. § 475, for violations of 40 P.S. §§ 472 through 474. In addition, failure to make the disclosure outlined in this subchapter may be considered a violation of 40 P.S. §§ 1171.1 through 1171.15.

- (g) Respondent's violations of Title 31, Pennsylvania Code, Sections 146.3, 146.5, 146.6 and 146.7 are punishable under Section 9 of the Unfair Insurance Practices Act (40 P.S. §§ 1171.9):
  - (i) cease and desist from engaging in the prohibited activity;
  - (ii) suspension or revocation of the license(s) of Respondent.
  
- (h) In addition to any penalties imposed by the Commissioner for Respondent's violations of the Unfair Insurance Practices Act (40 P.S. §§ 1171.1 – 1171.5), the Commissioner may, under Sections 10 and 11 of the Unfair Insurance Practices Act (40 P.S. §§ 1171.10, 1171.11) file an action in which the Commonwealth Court may impose the following civil penalties:
  - (i) for each method of competition, act or practice which the company knew or should have known was in violation of the law, a penalty of not more than five thousand dollars (\$5,000.00);

- (ii) for each method of competition, act or practice which the company did not know nor reasonably should have known was in violation of the law, a penalty of not more than one thousand dollars (\$1,000.00).

ORDER

5. In accord with the above Findings of Fact and Conclusions of Law, the Insurance Department orders and Respondent consents to the following:

- (a) Respondent shall cease and desist from engaging in the activities described herein in the Findings of Fact and Conclusions of Law.
- (b) Respondent shall file an affidavit stating under oath that it will provide each of its directors, at the next scheduled directors meeting, a copy of the adopted Report and related Orders. Such affidavit shall be submitted within thirty (30) days of the date of this Order.
- (c) Respondent shall pay a penalty of Twenty-Five Thousand Dollars (\$25,000.00) to the Commonwealth of Pennsylvania.
- (d) Payment shall be made by check payable to the Commonwealth of Pennsylvania. Payment should be directed to Sharon L. Fraser, Bureau of

Market Conduct, 1227 Strawberry Square, Harrisburg, Pennsylvania 17120.

Payment must be made no later than thirty (30) days after the date of this Order.

6. In the event the Insurance Department finds that there has been a breach of any of the provisions of this Order, based upon the Findings of Fact and Conclusions of Law contained herein may pursue any and all legal remedies available, including but not limited to the following: The Insurance Department may enforce the provisions of this Order in the Commonwealth Court of Pennsylvania or in any other court of law or equity having jurisdiction; or the Department may enforce the provisions of this Order in an administrative action pursuant to the Administrative Agency Law, supra, or other relevant provision of law.

7. Alternatively, in the event the Insurance Department finds that there has been a breach of any of the provisions of this Order, the Department may declare this Order to be null and void and, thereupon, reopen the entire matter for appropriate action pursuant to the Administrative Agency Law, supra, or other relevant provision of law.

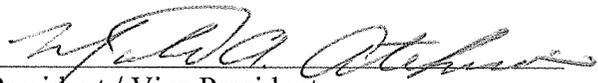
8. In any such enforcement proceeding, Respondent may contest whether a breach of the provisions of this Order has occurred but may not contest the Findings of Fact and Conclusions of Law contained herein.

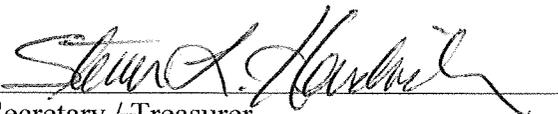
9. Respondent hereby expressly waives any relevant statute of limitations and application of the doctrine of laches for purposes of any enforcement of this Order.

10. This Order constitutes the entire agreement of the parties with respect to the matters referred to herein, and it may not be amended or modified except by an amended order signed by all the parties hereto.

11. This Order shall be final upon execution by the Insurance Department. Only the Insurance Commissioner or a duly authorized delegee is authorized to bind the Insurance Department with respect to the settlement of the alleged violations of law contained herein, and this Consent Order is not effective until executed by the Insurance Commissioner or a duly authorized delegee.

BY: CONTINENTAL LIFE INSURANCE  
COMPANY OF BRENTWOOD, TN,  
Respondent

  
President / Vice President

  
Secretary / Treasurer

  
COMMONWEALTH OF PENNSYLVANIA  
By: Ronald A. Gallagher, Jr.  
Deputy Insurance Commissioner

## **I. INTRODUCTION**

The Market Conduct Examination was conducted on Continental Life Insurance Company of Brentwood, Tennessee; hereafter referred to as “Company,” at the Company’s office located in Brentwood, Tennessee, October 28, 2008, through December 5, 2009. Subsequent review and follow-up was conducted in the office of the Pennsylvania Insurance Department.

Pennsylvania Market Conduct Examination Reports generally note only those items, to which the Department, after review, takes exception. A violation is any instance of Company activity that does not comply with an insurance statute or regulation. Violations contained in the Report may result in imposition of penalties. Generally, practices, procedures, or files that were reviewed by Department examiners during the course of an examination may not be referred to in the Report if no improprieties were noted. However, the Examination Report may include management recommendations addressing areas of concern noted by the Department, but for which no statutory violation was identified. This enables Company management to review these areas of concern in order to determine the potential impact upon Company operations or future compliance.

Throughout the course of the examination, Company officials were provided status memoranda, which referenced specific policy numbers with citation to each section of law violated. Additional information was requested to clarify apparent violations. An exit conference was conducted with Company officials to discuss the various types of violations identified during the examination and review written summaries provided on the violations found.

The courtesy and cooperation extended by the Officers and Employees of the Company during the course of the examination is acknowledged.

The following examiners participated in the Examination and in the preparation of this Report.

Daniel Stemcosky, AIE, FLMI, MCM  
Market Conduct Division Chief

Frank W. Kyazze, AIE, FLMI, MCM,ALHC  
Market Conduct Examiner

Gerald P. O'Hara, Jr.  
Market Conduct Examiner

**Verification**

Having been duly sworn, I hereby verify that the statements made in the within document are true and correct to the best of my knowledge, information and belief. I understand that false statements made herein are subject to the penalties of 18 Pa. C.S. §4903 (relating to false swearing).



Frank W. Kyazze, MCM, AIE, ALHC, FLMI

[Examiner in Charge]

Sworn to and Subscribed Before me

This 15 Day of April, 2009



Notary Public

COMMONWEALTH OF PENNSYLVANIA

NOTARIAL SEAL  
THERESA M. SENECA, Notary Public  
City of Harrisburg, Dauphin County  
My Commission Expires Aug. 15, 2010

## **II. SCOPE OF EXAMINATION**

The Market Conduct Examination was conducted pursuant to the authority granted by Sections 903 and 904 (40 P.S. §§323.3 and 323.4) of the Insurance Department Act and covered the experience period of July 1, 2007, through June 30, 2008, unless otherwise noted. The purpose of the examination was to ensure compliance with Pennsylvania insurance laws and regulations.

The examination focused on the Company's operation in areas such as: Advertising, Producer Licensing, Consumer Complaints, Forms, Underwriting Practices and Procedures, Claim Handling Practices and Procedures.

The Company was requested to identify the universe of files for each segment of the review. Based on the universe sizes identified, random sampling was utilized to select the files reviewed for this examination.

During the course of the examination, for control purposes, some of the review segments identified in this Report may have been broken down into various sub-categories by line of insurance or Company administration. These specific sub-categories, if not reflected individually in the Report, would be included and grouped within the respective general categories of the Examination Report.

### **III. COMPANY HISTORY AND LICENSING**

Continental Life Insurance Company of Brentwood, Tennessee (CLIC) has both its registered home office and main administrative office at 101 Continental Place, Brentwood, Tennessee 37027.

CLIC was incorporated under the laws of the State of Tennessee on December 5, 1983 and is licensed to conduct life and health insurance business in 35 states. CLIC's distribution is primarily based on a general agency system where it is represented by an extensive network of general and soliciting agents. CLIC offers a portfolio of insurance products including whole life, term life, Medicare supplement, hospitalization and cancer insurance. CLIC's Medicare supplement products provide the largest percentage of total premium income.

CLIC became a controlled insurer of Genworth Financial, Inc. on May 1, 2006, when 100% of the outstanding capital stock of its parent company, Continental Insurance Services, Inc. (CIS) was acquired by Genworth Life Insurance Company (GLIC), pursuant to a Stock Purchase Agreement dated January 19, 2006, following regulatory approval by the State of Tennessee, Department of Commerce and Insurance. On May 2, 2006, CIS was merged with and into CLIC with CLIC as the surviving entity. As a result of this merger, CLIC became a direct, wholly-owned subsidiary of GLIC.

As of the Company's December 31, 2007, annual statement for Pennsylvania, Continental Life Insurance Company of Brentwood, Tennessee reported direct premiums for ordinary life insurance considerations in the amount of \$229,457 and direct premiums for accident and health insurance in the amount of \$10,577,598.

#### **IV. ADVERTISING**

Title 31, Pennsylvania Code, Section 51.2(c) provides that “Any advertisements, whether or not actually filed or required to be filed with the Department under the provisions of this Regulation may be reviewed at any time at the discretion of the Department.” The Department, in exercising its discretionary authority for reviewing advertising, requested the Company to provide a copy of the advertising certificate of compliance as required by Title 31, Pennsylvania Code, Section 51.5. No violations were noted.

## V. FORMS

The Company was requested to provide a list of all individual and group policy/certificate forms, conversion contracts, applications, riders, amendments and endorsements used during the experience period in Pennsylvania. The forms provided and forms reviewed in various underwriting sections of the exam were reviewed to ensure compliance with Insurance Company Law, Section 354 and Title 18, Pennsylvania Consolidated Statutes, Section 4117(k), Fraud notice.

The following violations were noted:

### **3 Violations – Insurance Company Law, Section 354 (40 P.S. §477b)**

*It shall be unlawful for any insurance company, association, or exchange, including domestic mutual fire insurance companies, doing business in this Commonwealth, to issue, sell, or dispose of any policy, contract, or certificate, covering life, health, accident, personal liability, fire, marine, title, and all forms of casualty insurance or contracts pertaining to pure endowments or annuities, or any other contracts of insurance, or use applications, riders, or endorsements, in connection therewith, until the forms of the same have been submitted to and formally approved by the Insurance Commissioner.*

Evidence of Department's approval could not be established for the 3 forms noted. The application form number, description and frequency of use are listed in the table below.

<b>Form #</b>	<b>Description</b>	<b>Frequency of Use</b>
A-601	Application	3

## VI. PRODUCER LICENSING

The Company was requested to provide a list of all producers active and terminated during the experience period. Section 671-A (40 P.S. §310.71) of the Insurance Department Act prohibits producers from doing business on behalf of or as a representative of any entity without a written appointment from that entity. Section 641.1-A (40 P.S. §310.41a) of the Insurance Department Act prohibits a company from accepting insurance applications or securing any insurance business through anyone acting without a license. Section 671.1-A (40 P.S. §310.71a) of the Insurance Department Act requires the Company to report all producer terminations to the Department.

The Company provided a list of 1,087 active and terminated producers. A random sample of 50 producers was compared to departmental records of producers to verify appointments, terminations and licensing. In addition, a comparison was made on the individuals identified as producers on applications reviewed in the policy issued sections of the exam.

The following violations were noted:

### **12 Violations – Insurance Department Act, No. 147, Section 671-A (40 P.S. §310.71)**

*(a) Representative of the insurer. – An insurance producer shall not act on behalf of or as a representative of the insurer unless the insurance producer is appointed by the insurer. An insurance producer not acting as a representative of an insurer is not required to be appointed.*

*(b) Representative of the consumer. – An insurance producer acting on behalf of or representing an insurance consumer shall execute a written agreement with the insurance consumer prior to representing or acting on their behalf that:*

*(1) Delineates the services to be provided; and*

*(2) Provides full and complete disclosure of the fee to be paid to the insurance producer by the insurance consumer.*

*(c) Notification to department. – An insurer that appoints an insurance producer shall file with the department a notice of appointment. The notice shall state for which companies within the insurer’s holding company system or group the appointment is made.*

*(d) Termination of appointment. – Once appointed, an insurance producer shall remain appointed by an insurer until such time as the insurer terminates the appointment in writing to the insurance producer or until the insurance producer’s license is suspended, revoked or otherwise terminated.*

*(e) Appointment fee. – An appointment fee of \$12.50 will be billed annually to the insurer for each producer appointed by the insurer during the preceding calendar year regardless of the length of time the producer held the appointment with the insurer. The appointment fee may be modified by regulation.*

*(f) Reporting. – An insurer shall, upon request, certify to the department the names of all licensees appointed by the insurer.*

The Company failed to file a notice of appointment and submit appointment fees to the Insurance Department for the producer noted. The Company listed the producer as appointed; however, Department records did not indicate an active appointment during the experience period.

<b>Producer</b>
Fred Runco

The following 2 individuals were listed as producers on 11 applications reviewed in the policy issued sections of the exam; however, Department records do not identify these individuals as being appointed by the Company on the dates the applications were signed.

<b>Producer</b>
Eugene Binder
Karen Simundson

**1 Violation - Insurance Department Act, No. 147, Section 671.1-A (40 P.S. §310.71a) Termination of Appointments**

*(a) Termination. - An insurer which terminates an appointment pursuant to section 671-A(d) shall notify the department in writing on a form approved by the department, or through an electronic process approved by the department, within 30 days following the effective date of the termination.*

*(b) Reason for termination. - If the reason for the termination was a violation of this act or if the insurer had knowledge that the licensee was found to have engaged in any activity prohibited by this act, the insurer shall inform the department in the notification.*

The following producer was listed as terminated by the Company but not reported as terminated to the Department. Department records indicate an active status during the experience period.

<b>Producer</b>
Heidi Hilton

## **VII. CONSUMER COMPLAINTS**

The Company was requested to identify all consumer complaints received during the experience period and provide copies of consumer complaint logs for 2003, 2004, 2005 and 2006. The Company identified one consumer complaint received during the experience period. The complaint was requested, received and reviewed. The Company provided complaint logs as requested. The Department's list of written consumer complaints that were forwarded to the Company during the experience period was compared to the Company's complaint log.

The complaint file and the 4 years of complaint logs were reviewed for compliance with the Unfair Insurance Practices Act, No. 205 (40 P.S. §1171). Section 5(a)(11) of the Act requires maintenance of a complete record of all complaints received during the preceding four (4) years. The record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of the complaint and the time it took to process each complaint. Written complaint files involving claims were also reviewed for compliance with Title 31, Pennsylvania Code, Section 146.5(b) and 146.5(c), Unfair Claims Settlement Practices.

No violations were noted.

## **VIII. UNDERWRITING**

The Underwriting review was sorted and conducted in 5 general segments.

- A. Underwriting Guidelines
- B. Home Health Care Policies Issued
- C. Life Policies Issued
- D. Medicare Supplement Policies Issued
- E. Nursing Home Policies Issued

Each segment was reviewed for compliance with underwriting practices and included forms identification and producer identification. Issues relating to forms or licensing appear in those respective sections of the Report and are not duplicated in the Underwriting portion of the Report.

### **A. Underwriting Guidelines**

The Company was requested to provide all underwriting guidelines and manuals utilized during the experience period. The documentation provided was reviewed to ensure underwriting guidelines were in place and being followed in a uniform and consistent manner and that no underwriting practices or procedures were in place that could be considered discriminatory in nature, or specifically prohibited by statute or regulation. No violations were noted.

The following guidelines were reviewed:

1. Medicare Supplement Underwriting Guide
2. SafeGuard Standard Underwriting Procedure
3. Future Executive Standard Underwriting Procedure
4. Family Term Life Standard Underwriting Procedure

5. EZLife Standard Underwriting Procedure
6. ExtraCare Standard Underwriting Procedure
7. Nursing Home Care Standard Underwriting Procedure
8. CarePlus Standard Underwriting Procedure
9. Case Management Cancellations and Declinations

The manuals were reviewed to ensure underwriting guidelines were in place and being followed in a uniform and consistent manner and no underwriting practices or procedures were in place that could be considered discriminatory in nature, or specifically prohibited by statute or regulation. No violations were noted.

### **B. Home Health Care Policies Issued**

The Company identified a universe of 20 home health care policies issued during the experience period. All 20 files were requested, received and reviewed. The files were reviewed to determine compliance to issuance, underwriting, and replacement statutes and regulations. No violations were noted.

### **C. Life Policies Issued**

The Company identified a universe of 37 life insurance policies issued during the experience period. All 37 files were requested, received and reviewed. The files were reviewed to determine compliance to issuance, underwriting, and replacement statutes and regulations. The following violations were noted:

**1 Violation - Title 31, Pennsylvania Code, Section 81.5(b)**

*The insurer shall require as part of a completed application for life insurance or annuity a statement signed by the applicant as to whether the proposed insurance or annuity will replace existing life insurance or annuity.*

The applicant's replacement question was not answered on the application form in the file noted.

**2 Violations - Title 31, Pennsylvania Code, Section 81.6(a)(1)**

*An insurer that uses an agent or broker in a life insurance or annuity sale shall: Require with or as part of a completed application for life insurance or annuity a statement signed by the agent or broker as to whether the broker knows replacement is or may be involved in the transaction.*

The agent's question on replacement was not completed on the application for the 2 files noted.

**6 Violations - Title 31, Pennsylvania Code, Section 81.6(a)(2)(ii)**

*An insurer that uses an agent or broker in a life insurance or annuity sale shall, if replacement is involved: Send to each existing insurer a written communication advising of the replacement or proposed replacement and the identification information obtained under subparagraph (I) and in the case of life insurance, the disclosure statement as required by §83.3 (relating to disclosure statement) or ledger statement containing comparable policy data on the proposed life insurance. This written communication shall be made within 5 working days of the date the application is received in the replacing insurer's home or regional office, or the date the proposed policy or contract is issued, whichever is sooner.*

The replacement letter to the replaced company was not evident in 2 files, and the letter was late in 4 files.

### **3 Violations - Title 31, Pennsylvania Code, Section 81.6(c)**

*The replacing insurer shall maintain evidence of the Notice Regarding Replacement of Life Insurance and Annuities.*

The 3 files noted did not contain a copy of the required notice of replacement.

### **36 Violations - Title 31, Pennsylvania Code, Section 83.3 Disclosure Statement**

*(a) Required written disclosure. A life insurance agent, broker or insurer soliciting the type of business to which this subchapter applies shall provide a prospective purchaser with a written disclosure statement clearly labeled as such. An acceptable disclosure statement is attached as Appendix A.*

The 36 files noted did not contain evidence that a written disclosure was provided.

### **36 Violations - Title 31, Pennsylvania Code, Section 83.4a and Section 83.4b**

*(a) The agent shall submit to the insurer with or as a part of the application for life insurance a statement, signed by him, certifying that the written disclosure statement was given no later than the time that the application was signed by the applicant.*

*(b) The insurer shall maintain the agent's certification of disclosure statement delivery in its appropriate files for at least three years. The absence of the agent's certification from the appropriate files of the insurer shall constitute prima facie evidence that no disclosure statement was provided to the prospective purchaser of life insurance.*

The 36 files noted did not contain a copy of the required agent's certification of disclosure.

### **22 Violations - Title 31, Pennsylvania Code, Sections 83.55a and 83.55b**

*a) The agent shall submit to the insurer a statement, signed by him, certifying that the surrender comparison index disclosure was given upon delivery of the policy or earlier at the request of the life insurance applicant.*

*b) The insurer shall maintain the agent's certification of surrender comparison index disclosure delivery in its appropriate files for at least 3 years or until the conclusion of the next succeeding regular examination by the insurance department of its domicile, whichever is later. The absence of the agent's certification from the appropriate files of the insurer shall constitute prima facie evidence that no surrender comparison index disclosure was provided to the prospective purchaser of life insurance.*

The agent's certification of the surrender comparison index disclosure delivery was not evident in the 22 files noted.

### **9 Violations - Title 31, Pennsylvania Code, Section 83.55c**

*If it is the practice of the insurer to mail the policy directly to the applicant, the appropriate officer of the insurer shall certify, in conjunction with the annual statement of the insurer, that in accordance with this subchapter surrender comparison index disclosures have been included with policies at delivery or provided earlier upon request. Failure to so certify shall constitute prima facie evidence that surrender comparison index disclosures have not been provided to prospective purchasers of life insurance.*

The Company indicated that the policies in the 9 files noted were mailed directly to the policyholders; however, there was no evidence of the required certification of surrender comparisons index disclosure.

### **37 Violations - Insurance Company Law, Section 404-A (40 P.S. §625-4)**

*When the individual policy or annuity is delivered to the policyholder by the producer by hand, a delivery receipt shall be used. This receipt must be in at least a duplicate set and state the date the policy or annuity was received by the policyholder. The receipt date shall be the date on which the policyholder and producer sign the delivery receipt, and such date shall commence any applicable policy or annuity examination*

*period. Copies of the delivery receipt must be provided to the policyholder on the date of policy or annuity delivery and to the issuing insurer. When the individual policy or annuity is delivered by a means other than by hand delivery by the producer, the insurer shall establish appropriate means of verifying delivery by the producer of the policy or annuity and of establishing the date from which any applicable policy or examination period shall commence.*

Verification of the date of policy delivery date could not be established in the 37 files noted.

#### **D. Medicare Supplement Policies Issued**

The Company was requested to provide a list of all Medicare supplement policies issued during the experience period. The Company provided a list of 95 policies issued. A random sample of 50 files was requested, received and reviewed. The files were reviewed to determine compliance to issuance, underwriting, and replacement statutes and regulations. The following violations were noted:

##### **2 Violations - Title 31, Pennsylvania Code, Section 88.102**

*Upon determining that a sale will involve replacement, an insurer, other than a direct response insurer or its agent, shall furnish the applicant at the time of completing the application, the notice described in § 88.103 of this title (relating to notice form). One copy of such notice shall be furnished to the applicant and an additional copy signed by the applicant shall be retained by the insurer.*

The required replacement form was not evident in the 2 files noted.

## **7 Violations - Title 31, Pennsylvania Code, Section 89.783. Required Disclosure**

### **Provisions**

*(a) General rules. (6) Issuers of accident and sickness policies or certificates which provide hospital or medical expense coverage on an expense incurred or indemnity basis to a person eligible for Medicare, shall provide to these applicants a Guide to Health Insurance for People with Medicare in the form developed jointly by the National Association of Insurance Commissioners and the Health Care Financing Administration and in a type size no smaller than 12-point type. Delivery of the Guide shall be made whether or not these policies or certificates are advertised, solicited or issued as Medicare supplement policies or certificates as defined in this subchapter. Except in the case of direct response issuers, delivery of the Guide shall be made to the applicant at the time of application and acknowledgment of receipt of the Guide shall be obtained by the issuers. Direct response issuers shall deliver the Guide to the applicant upon request but not later than at the time the policy is delivered.*

The 7 files noted did not contain evidence that the applicants were provided a Guide to Health Insurance for People with Medicare.

## **5 Violations - Title 31, Pennsylvania Code, Section 89.783. Required Disclosure**

### **Provisions**

*(c) Outline of coverage requirements for Medicare supplement policies.*

*(1) Issuers shall provide an outline of coverage to applicants at the time the application is presented to the prospective applicant and, except for direct response policies, shall obtain an acknowledgement of receipt of the outline from the applicant.*

*(2) If an outline of coverage is provided at the time of application and the Medicare supplement policy or certificate is issued on a basis which would require revision of the outline, a substitute outline of coverage properly describing the policy or certificate shall accompany the policy or certificate when it is delivered and contain*

*the following statement, in no less than 12 point type, immediately above the company name:*

*“NOTICE: Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon application and the coverage originally applied for has not been issued.”*

The 5 files noted did not contain evidence that the applicants were provided an outline of coverage.

### **E. Nursing Home Policies Issued**

The Company was requested to provide a list of all individual issued policies during the experience period. The Company identified a universe of 7 nursing home policies issued. All 7 files were requested, received and reviewed. The files were reviewed to determine compliance to issuance, underwriting, and replacement statutes and regulations. No violations were noted.

## **IX. INTERNAL AUDIT & COMPLIANCE PROCEDURES**

The Company was requested to provide copies of their internal audit and compliance procedures. The Company was also requested to provide copies of all market conduct reports completed in the previous three years by other states. Additionally, the Company was requested to provide copies of any Insurance Market Standards Association (IMSA) reports. The documents provided were reviewed to ensure compliance with Insurance Company Law, Section 405-A (40 P.S. §625-5). Section 405-A provides for the establishment and maintenance of internal audit and compliance procedures which provides for the evaluation of compliance with all statutes and regulations dealing with sales methods, advertising, and filing and approval requirements for life insurance and annuities. The procedures shall also provide for the following:

- (1) Periodic reviews of consumer complaints in order to determine patterns of improper practices.
- (2) Regular reporting to senior officers and the board of directors or an appropriate committee thereof with respect to any significant findings.
- (3) The establishment of lines of communication, control and responsibility over the dissemination of advertising and promotional materials, including illustrations and illustration explanations, with the requirement that such materials shall not be used without the approval by company employees whose compensation, other than generally applicable company bonus or incentive plans, is not directly linked to marketing or sales.

No violations were noted.

The Company provided the following:

1. 2007 IMSA (Insurance Marketplace Standards Association) Independent Assessment Report
2. Market Conduct Report – Oklahoma Insurance Department
3. Matrix of Compliance Metrics and Compliance Metrics Process Map
4. General Agent Contract
5. Genworth Financial Guide to Ethical Market Conduct
6. Marketing Materials Signoff Sheet
7. Complaint Handling Update

No violations were noted.

## X. CLAIMS

The claims review consisted of a review of the Company's claim manuals and a review of the claim files. The Company was requested to provide copies of all procedural guidelines including all manuals, memorandums, directives and any correspondence or instructions used for processing claims during the experience period. The Company provided a claim processing manual for Life claims and a claim processing manual for Health claims.

The claim manuals and procedures were reviewed for any inconsistencies, which could be considered discriminatory, specifically prohibited by statute or regulation, or unusual in nature. No violations were noted.

The claim file review consisted of 3 areas:

- A. Accident & Health Claims
- B. Life Claims
- C. Medicare Supplement Claims

All claim files sampled were reviewed for compliance with requirements of the Unfair Insurance Practices Act, No. 205 (40 P.S. §1171) and Title 31, Pennsylvania Code, Chapter 146, Unfair Claims Settlement Practices.

## **A. Accident & Health Claims**

The Company was requested to provide a list of claims received during the experience period. The Company identified a universe of 20 accident and health claims. All 20 claim files were requested, received and reviewed. The files were reviewed for compliance with Title 31, Pennsylvania Code, Chapter 146. Unfair Insurance Practices. The following violations were noted:

### **1 Violation - Title 31, Pennsylvania Code, Section 146.3**

*The claim files of the insurer shall be subject to examination by the Commissioner or by his appointed designees. The files shall contain notes and work papers pertaining to the claim in the detail that pertinent events and the dates of the events can be reconstructed.*

The claim file noted was missing the claim received date.

### **4 Violations - Title 31, Pennsylvania Code, Section 146.5**

*Every insurer, upon receiving notification of a claim, shall within ten working days, acknowledge the receipt of such notice unless payment is made within such period of time. If an acknowledgement is made by means other than writing, an appropriate notation of such acknowledgment shall be made in the claim file of the insurer and dated.*

The Company failed to acknowledge the 4 claims noted within 10 working days.

### **2 Violations - Title 31, Pennsylvania Code, Section 146.6**

*Every insurer shall complete investigation of a claim within 30 days after notification of a claim, unless the investigation cannot reasonably be completed within the time. If the investigation cannot be completed within 30 days, and every 45 days thereafter, the*

*insurer shall provide the claimant with a reasonable written explanation for the delay and state when a decision on the claim may be expected.*

The Company failed to provide status letters in the 2 claims noted.

## **2 Violations - Title 31, Pennsylvania Code, Section 146.7**

*Within 15 working days after receipt by the insurer of properly executed proofs of loss, the first-party claimant shall be advised of the acceptance or denial of the claim by the insurer.*

The Company failed to provide notice of acceptance or denial within 15 working days in the 2 claims noted.

## **B. Life Claims**

The Company was requested to provide a list of claims received during the experience period. The Company identified a universe of 7 life claims. All 7 claim files were requested, received and reviewed. The files were reviewed for compliance with Title 31, Pennsylvania Code, Chapter 146 and Insurance Company Law, Section 411B, Payment of Interest (40 P.S. §511b). The following violations was noted:

### **1 Violation - Title 31, Pennsylvania Code, Section 146.3**

*The claim files of the insurer shall be subject to examination by the Commissioner or by his appointed designees. The files shall contain notes and work papers pertaining to the claim in the detail that pertinent events and the dates of the events can be reconstructed.*

The claim file noted was missing the claim notification proof.

### **C. Medicare Supplement Claims**

The Company was requested to provide a list of claims received during the experience period. The Company identified a universe of 169,047 Medicare Supplement Claims. A random sample of 100 claim files was requested, received and reviewed. The files were reviewed for compliance with Insurance Company Law of 1921, Section 2166 (40 P.S. §991.2166) Prompt Payment of Claims; as well as Title 31, Pennsylvania Code, Section 146. Unfair Insurance Practices. No violations were noted.

## **XI. RECOMMENDATIONS**

The recommendations made below identify corrective measures the Department finds necessary as a result of the number of some violations, or the nature and severity of other violations, noted in the Report.

1. The Company must review internal control procedures to ensure compliance with requirements of Title 31, Pennsylvania Code, Chapter 146, Unfair Claims Settlement Practices.
2. The Company must review internal control procedures to ensure compliance with forms filing and approval requirements of Section 354 of the Insurance Company Law of 1921 (40 P.S. §477b).
3. The Company must review Licensing procedures to ensure compliance with Sections 671-A and 671.1-A of the Insurance Department Act of 1921 (40 P.S. §§310.71 and 310.71a).
4. The Company must review internal control procedures to ensure compliance with replacement requirements of Title 31, Pennsylvania Code, Chapter 88.
5. The Company must review and revise internal control procedures to ensure compliance with the filing, suitability and disclosure requirements of Title 31, Pennsylvania Code, Section 89.783 Medicare Supplement Disclosures.
6. The Company must review and revise internal control procedures to ensure compliance with the replacement requirements of Title 31, Pennsylvania Code, Chapter 81.
7. The Company must implement procedures to ensure compliance with the policy delivery receipt requirements of Section 404-A of the Insurance Company Law of 1921 (40 P.S. §625-4).
8. The Company must review and revise internal control procedures to ensure compliance with disclosure requirements of Title 31, Pennsylvania Code, Chapter 83.

## **XII. COMPANY RESPONSE**



**John D. Piller**  
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May 29, 2009

**VIA ELECTRONIC MAIL**

Mr. Daniel A. Stemcosky  
Market Conduct Division Chief  
Pennsylvania Insurance Department  
1321 Strawberry Square  
Harrisburg, Pennsylvania 17120

RE: Continental Life Insurance Company of Brentwood, Tennessee  
Market Conduct Examination  
Response to Examination Report

Mr. Stemcosky:

It was a pleasure speaking with you yesterday.

Please allow this letter to serve as the formal response of Continental Life Insurance Company of Brentwood, TN to the Report on Examination mailed to the Company April 29, 2009.

The Company would first reiterate its prior disagreement with respect to the Department's interpretation of § 40 P.S. 625-4 as it relates to policy delivery requirements. The Company respectfully disagrees with the Department's position and believes the rule requires only that the Company establish appropriate means of verifying delivery (1) when a producer is involved and (2) when the method of delivery is other than by hand. The Company would agree it should verify delivery when a producer mails a policy. Notwithstanding the foregoing, should the Department maintain its position on this issue, the Company will take the appropriate steps to implement a process for verifying delivery of all policies mailed by the Company directly to the policyowner.

With respect to all other matters where the Department found that a violation of Pennsylvania rules had occurred, the Company has already begun taking steps to remedy these violations. Specifically, I would note the following:

1. As a general matter, with respect to all issues identified as relating to life insurance policies, the Company would note it notified the Department that its life policy forms would no longer be available for marketing effective December 31, 2008. Thus, all issues identified in the exam that relate to the issuance of new life policies are not currently applicable to the Company's operations. The Company is in the process of refilling new life policy forms and will have all life operational issues corrected per the Department's recommendations once the forms are approved by the Department.



2. The Company is reviewing its policies and procedures related to all other areas where a gap was identified (e.g. producer appointments and terminations) to ensure proper compliance with Pennsylvania rules. To the extent that additional training of specific operational areas is required, the Company will engage in such training to mitigate against future human errors.

3. After the Company was purchased by Genworth Financial, Inc. in 2006, it began a complete operational and product review to ensure compliance with state laws. The Company started with its health product lines, which comprise 90% of our business by premium and had begun its review of life products and operations at about the same time the Department began its review.

4. Since the aforementioned purchase, the Company has instituted many new controls and measures to ensure regulatory compliance. Largely due to these efforts, the Company received its IMSA certification in 2007.

If you have any questions or concerns, or need additional information, please do not hesitate to contact me directly at 804 281.6488.

Sincerely,

John D. Piller