

**REPORT OF  
MARKET CONDUCT EXAMINATION  
OF**

**THE GUARDIAN LIFE INSURANCE COMPANY  
OF AMERICA**  
New York, New York

**AS OF  
June 15, 2004**

**COMMONWEALTH OF PENNSYLVANIA**



**INSURANCE DEPARTMENT  
MARKET CONDUCT DIVISION**

**Issued: August 11, 2004**

# THE GUARDIAN LIFE INSURANCE COMPANY OF AMERICA

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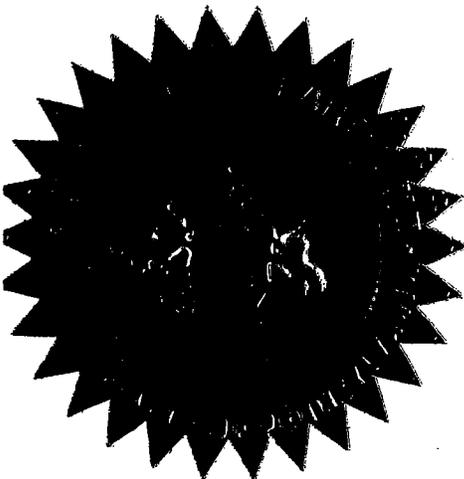
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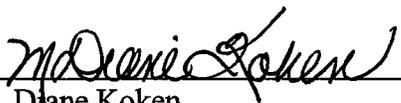
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BEFORE THE INSURANCE COMMISSIONER  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

ORDER

AND NOW, this 29 day of April, 2002, 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 Randolph L. Rohrbaugh, 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.



  
\_\_\_\_\_  
M. Diane Koken  
Insurance Commissioner

BEFORE THE INSURANCE COMMISSIONER  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

IN RE: : VIOLATIONS:  
: :  
THE GUARDIAN LIFE INSURANCE : Sections 605, 606, 623 and 903(a) of  
COMPANY OF AMERICA : the Insurance Department Act, Act of  
7 Hanover Square : May 17, 1921, P.L. 789, No. 285  
New York, NY 10004 : (40 P.S. §§ 235, 236, 253 and 323.3)  
: :  
: Sections 404-A, 406-A, 408-A(e)(1)(i)  
: and (ii), 408-A(e)(2)(i), 408-  
: A(e)(2)(ii), 408-A(e)(3)(ii), 408-  
: A(e)(5), 409-A and 410-D of the  
: Insurance Company Law, Act of May  
: 17, 1921, P.L. 682, No. 284 (40 P.S.  
: §§ 625-4, 625-6, 625-8, 625-9 and  
: 510c)  
: :  
: Section 3(a) of the Health and  
: Accident Reform Act, No. 159 (40 P.S.  
: § 3803)  
: :  
: Title 31, Pennsylvania Code, Sections  
: 37.61, 81.4, 81.5(b), 81.6(a)(1),  
: 81.6(a)(2)(ii), 81.6(c), 83.3, 83.3a,  
: 83.4a, 83.4b, 83.55, 83.55a, 83.55b,  
: 88.181, 146.5, 146.6 and 146.7  
: :  
: Title 18, Pennsylvania Consolidated  
: Statutes, Section 4117(k)  
: :  
Respondent. : Docket No. MC04-07-029

CONSENT ORDER

AND NOW, this *11<sup>th</sup>* day of *AUGUST*, 2004, this Order is hereby  
issued by the Deputy Insurance Commissioner 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 Deputy Insurance Commissioner finds true and correct each of the following Findings of Fact:

- (a) Respondent is The Guardian Life Insurance Company of America, and maintains its address at 7 Hanover Square, New York, New York 10004.
- (b) A market conduct examination of Respondent was conducted by the Insurance Department covering the period from July 1, 2002 through June 30, 2003.

- (c) On June 15, 2004, the Insurance Department issued a Market Conduct Examination Report to Respondent.
- (d) A response to the Examination Report was provided by Respondent on July 2, 2004.
- (e) The Examination Report notes violations of the following:
  - (i) Section 605 of the Insurance Department Act, No. 285 (40 P.S. § 235), which requires that no agent shall do business on behalf of any entity without written appointment from that entity;
  - (ii) Section 606 of the Insurance Department Act, No. 285 (40 P.S. § 236), which requires all entities to report to the Department all appointments and terminations of appointments in the format and time frame required by the Department's regulations;
  - (iii) Section 623 of the Insurance Department Act, No. 285 (40 P.S. § 253), which prohibits doing business with unlicensed brokers;
  - (iv) Section 903(a) of the Insurance Department Act, No. 285 (40 P.S. § 323.3), which requires every company or person subject to examination must keep all books, records, accounts, papers, documents and any or all computer or

other recordings relating to its property, assets, business and affairs in such manner and for such time periods as the Department may require, in order that its representatives may ascertain whether the company has complied with the laws of the Commonwealth;

- (v) 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 to the policyholder 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;

- (vi) Section 406-A of the Insurance Company Law, No. 284 (40 P.S. §625-6), which prohibits any alteration of any written application for a life insurance

policy or annuity to be made by any person other than the applicant without the applicant's written consent;

- (vii) Section 408-A(e)(1)(i) of the Insurance Company Law, No. 284 (40 P.S. § 625-8), which states if the policy is applied for as illustrated, a copy of that illustration, signed in accordance with this section, shall be submitted to the insurer no later than the time the application is sent to the insurer. A copy shall also be provided to the applicant no later than the time the application is signed by the applicant;
  
- (viii) Section 408-A(e)(1)(ii) of the Insurance Company Law, No. 284 (40 P.S. § 625-8), which states if the policy is issued other than as applied for, a revised basic illustration conforming to the policy as issued shall be mailed or delivered with the policy. The revised illustration shall conform to the requirements for basic illustrations contained in this act and shall be labeled "Revised Illustration." The statement shall be signed and dated by the policy owner and producer no later than the time the policy is delivered. A copy shall be provided to the policy owner no later than the time the policy is delivered and to the insurer as soon as practical after the policy is delivered;
  
- (ix) Section 408-A(e)(2)(i) of the Insurance Company Law, No. 284 (40 P.S. § 625-8), states the following applies if no illustration is used by a producer

in the sale of a life insurance policy or if a computer screen illustration is displayed. The producer shall certify in writing on a form provided by the insurer that no illustration was used in the sale of the life insurance policy. On the same form, the applicant shall acknowledge an understanding that an illustration conforming to the policy as issued will be provided no later than at the time of policy delivery;

- (x) Section 408-A(e)(2)(ii) of the Insurance Company Law, No. 284 (40 P.S. § 625-8), states the following applies if no illustration is used by a producer in the sale of a life insurance policy or if a computer screen illustration is displayed. Where a computer screen illustration is used, the producer shall certify in writing on a form provided by the insurer that a computer screen illustration was displayed. Such form shall require the producer to provide, as applicable, the generic name of the policy and any riders illustrated, the guaranteed and non-guaranteed interest rates illustrated, the number of policy years illustrated, the initial death benefit, the premium amount illustrated and the assumed number of years of premiums. On the same form, the applicant shall further acknowledge that an illustration matching that which was displayed on the computer screen will be provided no later than the time the application is provided to the insurer. A copy of this signed form shall be provided to the applicant at the time it is signed;

- (xi) Section 408-A(e)(3)(ii) of the Insurance Company Law, No. 284 (40 P.S. § 625-8), states the following applies if an illustration is used by a producer in the sale of a life insurance policy but the policy applied for is other than as illustrated. If the policy is issued, a basic illustration conforming to the policy as issued shall be sent with the policy and signed by the policy owner no later than the time the policy is delivered. A copy shall be provided to the policy owner no later than the time the policy is delivered and to the insured as soon as practical after the policy is delivered;
  
- (xii) Section 408-A(e)(5) of the Insurance Company Law, No. 284 (40 P.S. § 625-8), which requires a copy of the basic illustration and a revised basic illustration, if any, signed as applicable, along with any certification that either no illustration was used or that the policy was applied for other than as illustrated, shall be retained by the insurer until three (3) years after the policy is no longer in force;
  
- (xiii) Section 409-A of the Insurance Company Law, No. 284 (40 P.S. § 625-9), requires that when there is solicitation for the replacement of an existing insurance policy or annuity with the same insurer or insurer group, the insurer shall, through its producers where appropriate, provide a “Notice Regarding Replacement of Life Insurance and Annuities” in the form set forth under Title 31, Pennsylvania Code, Chapter 81;

(xiv) Section 410D(a)(2) of the Insurance Company Law, No. 284 (40 P.S. § 510c), which requires individual fixed dollar life insurance or endowment policies which are offered as replacements for an existing life insurance policy or annuity contract with the same insurer or insurer group shall not be delivered in the Commonwealth unless they shall have prominently printed on the first page of such policy or attached thereto, a notice stating that the policyholder shall be permitted to return the policy within at least 45 days of its delivery (“free look provision”);

(xv) Section 410D(a)(3) of the Insurance Company Law, No. 284 (40 P.S. § 510c), which requires individual fixed dollar life insurance or endowment policies which are offered as replacements for an existing life insurance policy or annuity contract with an insurer or insurer group other than the one which issued the original policy shall not be delivered in the Commonwealth unless they shall have prominently printed on the first page of such policy or attached thereto, a notice stating that the policyholder shall be permitted to return the policy within at least 20 days of its delivery (“free look provision”);

(xvi) Section 3(a) of the Accident and Health Filing Reform Act (40 P.S. § 3803), requires each insurer and HMO to file with the Department any form which it proposes to issue in this Commonwealth except those which the Commissioner opines not to be filed;

- (xvii) Title 31, Pennsylvania Code, Section 37.61, which states that an entity may terminate an agent's appointment, and the termination activity by an entity shall be reported to the Department on a monthly basis in the format approved by the Department, and filed within 30 days of the end of the month being reported;
  
- (xviii) Title 31, Pennsylvania Code, Section 81.4(b)(1), which states if replacement is involved, the agent or broker shall present to the applicant, not later than at the time of taking the application, a Notice Regarding Replacement of Life Insurance and Annuities;
  
- (xix) Title 31, Pennsylvania Code, Section 81.5(b), which requires the insurer to have, as part of the completed application for life insurance or annuity, a statement signed by the applicant of whether the proposed insurance or annuity will replace existing life insurance or annuity;
  
- (xx) 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;

- (xxi) Title 31, Pennsylvania Code, Section 81.6(a)(2)(ii), which requires 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 or ledger statement containing comparable policy data on the proposed life insurance. This written communication shall be made within three 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;
- (xxii) 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;
- (xxiii) 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;
- (xxiv) Title 31, Pennsylvania Code, Section 83.3a, which requires a disclosure statement to be a document which shall describe the purpose and importance

of the disclosure and describe the significant elements of the policy and riders being offered;

(xxv) Title 31, Pennsylvania Code, Section 83.4a and 83.4b, which requires (a) the agent to submit to the insurer with or as 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, and (b) the insurer to 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;

(xxvi) Title 31, Pennsylvania Code, Section 83.55, which states 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. A disclosure that is minimally satisfactory to the Department is set forth in Appendix B. If the Appendix B disclosure will be used, a letter prior to use is adequate notification to the Department for review prior to use;

(xxvii) Title 31, Pennsylvania Code, Sections 83.55a and 83.55b, which (a) require the agent to 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; and (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 files of the insurer shall constitute *prima facie* evidence that no surrender comparison index disclosure was provided to the prospective purchaser of life insurance;

(xxviii) Title 31, Pennsylvania Code, Section 88.181, which prohibits any policy from delivery or issuance for delivery in this commonwealth unless an appropriate outline of coverage either accompanies the policy or is delivered at the time application is made;

(xxix) 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;

- (xxx) 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;
- (xxxi) Title 31, Pennsylvania Code, Section 146.7(a)(1) requires that 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, and
- (xxxii) Title 18, Pennsylvania Consolidated Statutes, Section 4117(k), which requires all applications for insurance and all claim forms shall contain or have attached thereto the following notice: “Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties.”

#### CONCLUSIONS OF LAW

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

- (a) Respondent is subject to the jurisdiction of the Pennsylvania Insurance Department.
- (b) Violations of Sections 605, 606 and 623 of the Insurance Department Act (40 P.S. §§ 235, 236 and 253) are punishable as detailed in the Report of Examination by the following, under Section 639 of the Insurance Department Act (40 P.S. § 279):
- (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) issue an order to cease and desist.
  - (iv) impose such other conditions as the department may deem appropriate.
- (c) Respondent's violations of Sections 404-A, 406-A, 408-A, 409-A and 410-D of the Insurance Company Law, No. 284 (40 P.S. §§ 625-4, 625-6, 625-8, 625-9, and 510c) are punishable as detailed in the Report of Examination 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.

(d) Respondent's violations of Section 3 of the Accident and Health Filing Reform Act, No. 159 (40 P.S. § 3803) are punishable as detailed in the Report of Examination under Section 13 of the Act:

- (i) suspension or revocation of the license of the offending insurer or HMO;
- (ii) refusal, for a period not to exceed one year, to issue a new license to the offending insurer or HMO;
- (iii) a fine of not more than \$5,000 for each violation of this Act;
- (iv) a fine of not more than \$10,000 for each willful violation of this Act;
- (v) a fine of not more than \$25,000 for each wilful violation of Section 6.

(e) Respondent's violations of Title 31, Pennsylvania Code, Sections 81.4, 81.5 and 81.6 are punishable, as detailed in the Report of Examination, 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, Sections 83.3, 83.4, and 83.5, are punishable, as detailed in the Report of Examination, 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 146.5, 146.6 and 146.7 are punishable, as detailed in the Report of Examination, 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 Deputy Insurance Commissioner 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 comply with all recommendations contained in the attached Report.

(d) Respondent shall pay Sixty Thousand Dollars (\$60,000.00) to the Commonwealth of Pennsylvania in settlement of all violations contained in the Report.

(e) Payment of this matter shall be made by check payable to the Commonwealth of Pennsylvania. Payment should be directed to Sharon L. Harbert, Administrative Assistant, Bureau of Enforcement, 1311 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 Deputy Insurance Commissioner 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 Deputy Insurance Commissioner 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 Deputy Insurance Commissioner 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 Deputy Commissioner finds that there has been a breach of any of the provisions of this Order, the Deputy Commissioner 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.

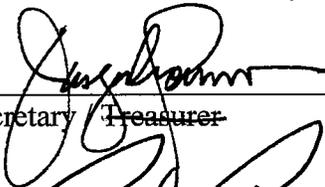
10. This Order constitutes the entire agreement of the parties with respect to the matters referred to herein, and it may not be amended or modified except by an amended order signed by all the parties hereto.

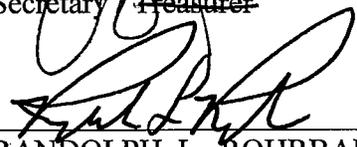
11. This Order shall be final upon execution by the Deputy Insurance Commissioner. Only the Insurance Commissioner or a duly authorized Deputy Insurance Commissioner is authorized to bind the Insurance Department with respect to the settlement of the alleged violations of law contained herein, and this Consent

Order is not effective until executed by the Insurance Commissioner or a duly authorized Deputy Insurance Commissioner.

BY: THE GUARDIAN LIFE INSURANCE  
COMPANY OF AMERICA, Respondent

  
\_\_\_\_\_  
President / Vice President / Director

  
\_\_\_\_\_  
Secretary / Treasurer

  
\_\_\_\_\_  
RANDOLPH L. ROHRBAUGH  
Deputy Insurance Commissioner  
Commonwealth of Pennsylvania

## I. INTRODUCTION

The Market Conduct Examination was conducted on The Guardian Life Insurance Company of America, hereafter referred to as "Company," at the Company's offices located in New York, New York, September 15, 2003, through November 19, 2003. 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.

## **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, 2002, through June 30, 2003, unless otherwise noted. The purpose of the examination was to determine compliance by the Company with Pennsylvania insurance laws and regulations.

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

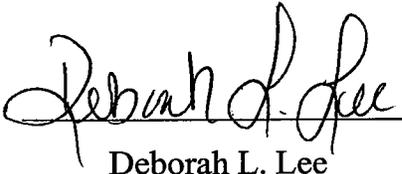
During the course of the examination, for control purposes, some of the review segments identified in this Report may have been broken down into various sub-categories by line of insurance or Company administration. These specific sub-categories, if not reflected individually in the Report, would be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

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

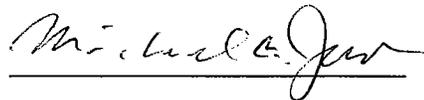
The undersigned participated in the Examination and in the preparation of this Report.



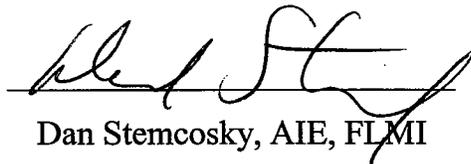
Chester A. Derk Jr., AIE, HIA  
Market Conduct Division Chief



Deborah L. Lee  
Market Conduct Examiner



Michael Jones  
Market Conduct Examiner



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

The Guardian Life Insurance Company of America was incorporated in the State of New York on April 10, 1860, and commenced business on July 16, 1860. The Guardian Life Insurance Company of America is a mutual life insurance company and is licensed in all states and the District of Columbia.

The Guardian Life Insurance Company of America (Guardian) and its subsidiaries, The Guardian Insurance & Annuity Company Inc. (GIAC) and Berkshire Life Insurance Company of America (Berkshire), collectively market a diversified mix of individual and group products. The Company has recently established Guardian Trust Company (GTC), a full-service trust company.

Guardian and its subsidiaries primarily sell life insurance, disability coverage, fixed and variable annuities and mutual funds in the individual markets. In the group market, the Company markets a diversified portfolio of medical and non-medical group insurance coverages.

Guardian distributes its individual products nationally, through a general agency field force of career agents, as well as a network of brokers. In group markets, the Company sells its products through its regional sales force and through brokers, primarily targeting the small-case market.

As of their December, 2003, annual statement for Pennsylvania, The Guardian Life Insurance Company of America reported direct premium for ordinary life insurance and annuities in the amount of \$98,230,792; and direct premium for accident and health in the amount of \$87,071,497.

#### **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 copies of all advertising materials used for solicitation and sales during the experience period.

The Company provided a list of 468 pieces of advertising utilized in the Commonwealth during the experience period. The advertising consisted of: Letters, Direct Mailers, Brochures, Presentations, Radio and Television Scripts, Cards, Illustrations, Product Guides, Product Manuals and the Company’s web page. A sample of 75 pieces of advertising was requested, received and reviewed. The 75 advertising materials and the Company’s web site were reviewed to ascertain compliance with Act 205, Section 5 (40 P.S. §1171.5), Unfair Methods of Competition and Unfair or Deceptive Acts or Practices and Title 31, Pennsylvania Code, Chapter 51 and Chapter 89. No violations were noted.

## V. FORMS

Throughout the course of the examination, all underwriting files were reviewed to identify the policy contracts, riders, endorsements and applications used in order to determine compliance with requirements of Insurance Company Law, Chapter 2, Section 354 (40 P.S. §477b), as well as provisions for various mandated benefits. Applications and claim forms were also reviewed to determine compliance with Title 18, Pa. C.S., Section 4117(k). The following violations were noted:

### **159 Violations - Title 18, Pa. C. S., Section 4117(k)**

All applications for insurance and all claim forms shall contain or have attached thereto the following notice:

“Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance ace, which is a crime and subjects such person to criminal and civil penalties.”

The following application forms did not contain the required fraud statement. The application form description and frequency of use is listed in the table below.

Form Number	Description	Number of Files
GG-012637(10/98)	Group Application	73
GG-012637(4/02)	Group Application	8
GG-012638(4/02)	Group Application	3
GG-010703-PA	Group Application	3
GG-012637(TN)(4/02)	Group Application	1
GG-012637(6/97)	Group Application	1
GG-010703(11/89)	Group Application	1
Custom	Enrollment Application	26
CEF1999	Enrollment Application	25
GG013374D	Enrollment Application	9
CEF-NY-1999	Enrollment Application	1

Form Number	Description	Number of Files
GG-011364NY	Enrollment Application	1
GG012897	Enrollment Application	1
GG013971	Enrollment Application	1
GG013374	Enrollment Application	1
GG013364	Enrollment Application	1
GG013340	Enrollment Application	1
enrollcarddoc	Enrollment Application	1
enrollcarddent	Enrollment Application	1

## **VI. AGENT LICENSING**

The Company was requested to provide a list of all agents active and terminated during the experience period. Section 606 (40 P.S. §236) of the Insurance Department Act requires all entities to report all appointments and terminations to the Insurance Department. Section 605 (40 P.S. §235) of the Insurance Department Act prohibits agents from doing business on behalf of any entity without a written appointment from that entity. Section 623 (40 P.S. §253) of the Insurance Department Act prohibits a company from accepting insurance applications or securing any insurance business through anyone acting without a license. A random sampling of the Company's list of agents and those agents identified in the underwriting files during the examination were compared to Insurance Department licensing records to verify compliance with Section 605, Section 606 and Section 623 of the Insurance Department Act.

The Company provided a list of 4,111 active agents, and 133 terminated agents. A random sample of 150 active agents and all 133 terminated agents was compared to departmental records of agents to verify appointments, terminations and licensing. In addition, a comparison was made on the agents identified as producers on applications reviewed in the policy issued sections of the exam. The following violations were noted:

### **1 Violation – Insurance Department Act, Section 606 (40 P.S. §236)**

All entities shall report to the Insurance Department all appointments and terminations of appointments in the format and time frame required by the Insurance Department's regulations. The Company failed to report all agent appointments to the Insurance Department.

**44 Violations – Insurance Department Act, Section 605(c)(d), (40 P.S. §235)**

- (a) No agent shall do business on behalf of any entity without a written appointment from that entity.
- (b) All appointments shall be obtained by procedures established by the Insurance Department's regulations.
- (c) Insurance entities authorized to do business in this Commonwealth shall, from time to time as determined by the Insurance Department, certify to the Insurance Department the names of all agents appointed by them.
- (d) Each appointment fee, both new and renewal, shall be paid in full by the entity appointing the agent.

The Company failed to certify and submit appointment fees to the Insurance Department for the following 40 agents listed as active by the Company.

Last Name	First Name
JOYCE	JOHN
ELITZER	MICHAEL
GIANGRANDE	JAMES
GEILS	ROBERT
FRANCHI	RICHARD E.
PRITZLAFF	ODE
SULLIVAN	DANIEL
MICHAELS JR.	ANDREW
GUGGINO	MICHAEL
DURBIN	HAMPTON
GRADY	BRIAN
BARTON	JAMES
RUSSELL	STEVEN
BRANISH	JOHN
RATINI	JOHN
SHOFFNER	DANIEL
OATES III	JOHN
ANELLO	PHILIP
HARFORD	JOHN
MCILHENNY	ANDREW
DAVIES	DARREN
DESTEFANO	DAN
LEWIS	JOHN

BAKER	EPH
GUM	W
DIMARCO	DAVID
HIBBERD	PETER
MEAGHER	FRANCIS
DAVIS	WESLEY
LIPKIN LEVY YENTIS INC	
SEDGWICK NOBLE LOWNDES	
MATRIX FINANCIAL GROUP	
ECKENRODE AGENCY INC	
AUBREY FINANCIAL SVCES	
BARRAYECCHIC	ANTHONY
CRAWFORD	JULIUS
THE L WARNER COMPS INC	
COLE	THOMAS
THE COURY GROUP	
SHELTON	WILLIAM

The company failed to certify and submit appointment fees to the Insurance Department for the following 4 agents listed on applications reviewed in the underwriting sections of the exam.

Agent Name
Raymond Jewell
Tracy Kennedy
Chad Paules
Richard Zacharoff

**7 Violations – Insurance Department Act, Section 623 (40 P.S. §253)**

Any entity or the appointed agent of any entity accepting applications or orders for insurance or securing any insurance business through anyone acting without a license commits a misdemeanor of the third degree. The following 7 individuals were listed as agents for the Company, however Department records do not identify them as holding a Pennsylvania insurance license.

<b>Agent/Agency</b>
Wesley Davis
Eckenrode Agency Inc
Anthony Barrayecchic
Julius Crawford
The L Warner Comps Inc
Thomas Cole
William Shelton

**8 Violations – Title 31, Pennsylvania Code, Section 37.61**

Appointments and terminations by entity:

- (b) An entity may terminate an agent’s appointment.
- (4) Termination activity by an entity shall be reported to the Department on a monthly basis. The report shall be in a format approved by the Department. The report shall be filed within 30 days of the end of the month being reported.

The following agents were listed as terminated by the Company but not reported as terminated to the Department. Department records indicate active status.

<b>Last Name</b>	<b>First Name</b>
STELZL	HENRY
HOOKER	THOMAS
POWNALL	EDWARD
DEPRIMO	JOHN
MCGROARTY	MICHAEL
DAVIS	MARK
CUMMINGS	MICHAEL
DICKERSON	CAROLINE

## VII. CONSUMER COMPLAINTS

The Company was requested to identify all consumer complaints received during the experience period and provide copies of their consumer complaint logs for 1999, 2000, 2001, and 2002. The Company identified 38 written consumer complaints and provided complaints logs for 1999, 2000, 2001 and 2002. Of the 38 consumer complaints identified, 10 were forwarded from the Department. All 38 consumer complaint files were requested, received and reviewed.

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 files 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. The following is a synopsis of the 38 complaints reviewed.

Number - 38	Complaint Reason	Percentage – 100%
16	Claim Denial/Processing	42%
11	Service/Administrative Problems	29%
8	Dental Quality of Care	21%
2	Agent Misrepresentation	5%
1	Agent Handling	3%

No violations were noted.

## **VIII. UNDERWRITING**

The Underwriting review was sorted and conducted in 17 general segments.

- A. Underwriting Guidelines
- B. Group Policies Issued
- C. Group Certificates Issued
- D. Group Policies Declined
- E. Group Policies Terminated
- F. Certificate Holders Declined
- G. Group Conversions
- H. Life Policies Issued
- I. Life Policies Declined
- J. Life Policies Terminated
- K. Life Policies Not-Taken
- L. Life Policies Issued as Replacements
- M. Term Life Conversions
- N. Disability Policies Issued
- O. Disability Policies Terminated
- P. Disability Policies Not-Taken
- Q. Disability Policies Declined

Each segment was reviewed for compliance with underwriting practices and included forms identification and agent identification. Issues relating to forms or agent/broker 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 copies of all established written underwriting guidelines in use during the experience period. Underwriting guidelines were reviewed to ensure guidelines were in place and being followed in a uniform and consistent manner and no underwriting practices or procedures were in place which could possibly be considered discriminatory in nature, or specifically prohibited by statute or regulation. No violations were noted.

The following manuals and guides were provided and reviewed:

1. Life Product Manual, Life Underwriting & Administration (Floppy Disc)
2. Guardian On-Line Underwriting Guidelines: Resources/Document Library/Quick Reference/Product Manuals/Underwriting/State Approvals/Materials for Client Use
3. Life Electronic Reference and News "LERN"

### **B. Group Policies Issued**

The Company identified a universe of 487 group policies issued during the experience period. A random sample of 25 group issued files was requested, received and reviewed. The policy files were reviewed to determine compliance to issuance statutes and regulations. No violations were noted.

### **C. Group Certificates Issued**

The Company was requested to provide a list of all certificate holders enrolled during the experience period. The Company provided a list of 16,383 certificate holders. A random sample of 100 certificate holders files was requested, received and reviewed. Of the 100 files received, 9 files did not contain the individual enrollment forms. The files were reviewed to ensure compliance with Pennsylvania Consolidated Statutes, Section 4117(k). The following violations were noted:

#### **9 Violations - Insurance Department Act, Section 903 (40 P.S. §323.3)**

(a) Every Company or person subject to examination in accordance with this act must keep all books, records, accounts, papers, documents and any or all computer or other recordings relating to its property, assets, business and affairs in such manner and for such time periods as the department, at its discretion, may require in order that its authorized representatives may readily ascertain whether the Company or person has complied with the laws of this Commonwealth.

The Company failed to provide individual enrollment forms for the 9 files noted.

### **D. Group Policies Declined**

The Company was requested to provide a list of all group policies declined during the experience period. The company identified 16 group policies declined coverage. All 16 declined group policy files were requested, received and reviewed. Of the 16 files reviewed, 5 policies were declined for not meeting Company standards of insurability for Long Term Disability and/or Short Term Disability coverage, 5 were withdrawn by request of the group applicant, 5 were issued under a new policy number, and 1 was issued after receiving requested additional information. The policy files were reviewed to determine compliance to issuance statutes and regulations and to ensure declinations were not the result of any discriminatory underwriting practice. No violations were noted.

### **E. Group Policies Terminated**

The Company was requested to provide a list of all group policies terminated during the experience. The Company identified a universe of 510 group insurance policies terminated. A random sample of 25 files was requested, received and reviewed. The 25 policy files were reviewed to ensure compliance with contract provisions, termination laws and regulations, and proper return of any unearned premium. No violations were noted.

The following table summarizes the reasons for termination.

Number	Termination Reason	Percent
12	Group Requested Termination	48%
11	Lapse Non-Payment	44%
1	Group Ceased Operations	4%
1	Group Name Change	4%

### **F. Certificate Holders Declined**

The Company was requested to provide a list of all policies declined during the experience period. The Company identified 84 group certificate holders declined. A random sample of 25 files was requested, received, and reviewed. The files were reviewed to ensure declinations were not the result of any discriminatory underwriting practice. No violations were noted.

The following table is a synopsis of the 25 declination files reviewed.

Number	Group Coverage	Declination Reason	Percent
15	Life	Medical History	60%
4	Short Term Disability	Medical History	16%
3	Optional Life	Medical History	12%
3	Life and Disability	Medical History	12%

### **G. Group Conversions**

The Company was requested to provide a list of all certificate holders converting group insurance during the experience period. The Company identified a universe of 16 certificate holders converting their group life coverage upon termination to an optional group life insurance plan. All 16 conversion files were requested, received and reviewed. The optional group life insurance certificate, issued as a conversion in the 16 files, certifies coverage under a Group Policy issued in the State of Rhode Island. No violations were noted.

## **H. Life Policies Issued**

The Company identified a universe of 3,572 life policies issued during the experience period. A random sample of 100 life policy files was requested. Of the 100 files requested and received, 8 were not-taken policies and reissued under different policy numbers, 2 policy files were reviewed in the Life Replacement section of the exam and 1 policy file was reviewed in the Term Conversion section. The remaining 89 policy files were reviewed to determine compliance to issuance, underwriting, and replacement statutes and regulations. The following violations were noted:

### **1 Violation - Insurance Department Act, Section 903 (40 P.S. §323.3)**

(a) Every Company or person subject to examination in accordance with this act must keep all books, records, accounts, papers, documents and any or all computer or other recordings relating to its property, assets, business and affairs in such manner and for such time periods as the department, at its discretion, may require in order that its authorized representatives may readily ascertain whether the Company or person has complied with the laws of this Commonwealth. The file noted was missing the application.

### **1 Violation- Title 31, Pennsylvania Code, Section 81.4(b)(1)**

If replacement is involved, the agent or broker shall: present to the applicant, not later than at the time of taking the application, a Notice Regarding Replacement of Life Insurance and Annuities. In the noted file, the replacement form was dated after the application date.

**2 Violations - 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 in the 2 noted files.

**7 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. Of the 7 files noted, the agents statement on replacement was not completed in 5 files and the applications did not contain an agent's statement regarding replacement in 2 files.

**7 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 7 files noted did not contain a disclosure form.

**41 Violations -Title 31, Pennsylvania Code, Section 83.3(a)**

A disclosure statement shall be a document which shall describe the purpose and importance of the disclosure and describe the significant elements of the policy and riders being offered. The disclosure statements included in the 41 files noted were incomplete.

**70 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 70 files noted did not contain a copy of the required agent's certification of disclosure.

**4 Violations – Title 31, Pennsylvania Code, Section 83.55**

(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.

(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.

The 4 files noted did not include the Cost Surrender Comparison Index Disclosure.

#### **4 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 4 files noted.

#### **1 Violation - 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 policy delivery could not be established in one file.

**5 Violations– Insurance Company Law, Section 406-A (40 P.S. §625-6)**

No alteration of any written application for a life insurance policy or annuity shall be made by any person other than the applicant without the applicant’s written consent. The 5 files noted contained alterations without the applicants consent.

**7 Violations–Insurance Company Law, Section 408-A(e)(1)(ii) (40 P.S. §625-8)**

If the policy is issued other than as applied for, a revised basic illustration conforming to the policy as issued shall be mailed or delivered with the policy. The revised illustration shall conform to the requirements for basic illustrations contained in this act and shall be labeled “Revised Illustration.” The statement required by subsection (c)(4) shall be signed and dated by the policy owner and producer no later than the time the policy is delivered. A copy shall be provided to the policy owner no later than the time the policy is delivered and to the insurer as soon as practical after the policy is delivered. Of the 7 files noted, 5 files did not contain the signed certification and acknowledgement of the delivery of an illustration and 2 files listed contained revised illustrations but the illustrations were not labeled as “Revised Illustration”.

**36 Violations – Insurance Company Law, Section 408-A(e)(2)(i)**

The following applies if no illustration is used by a producer in the sale of a life insurance policy or if a computer screen illustration is displayed. The producer shall certify in writing on a form provided by the insurer that no illustration was used in the sale of the life insurance policy. On the same form the applicant shall acknowledge an understanding that an illustration conforming to the policy as issued will be provided no later than at the time of policy delivery. In the 36 files noted, the agent certified on the Company Sales Illustration Certification Form 97-IC PA that no illustration was provided to the applicant. The agent is required to certify that no illustration was used in the sale of the life insurance policy.

**1 Violation – Insurance Company Law, Section 408-A(e)(2)(ii)**

The following applies if no illustration is used by a producer in the sale of a life insurance policy or if a computer screen illustration is displayed. Where a computer screen illustration is used, the producer shall certify in writing on a form provided by the insurer that a computer screen illustration was displayed. Such form shall require the producer to provide, as applicable, the generic name of the policy and any riders illustrated, the guarantee and non-guaranteed interest rates illustrated, the initial death benefit, the premium amount illustrated and the assumed number of years of premiums. On the same form the applicant shall further acknowledge an understanding that an illustration matching that which was displayed will be provided no later than the time the application is provided to the insurer. A copy of this signed form shall be provided to the applicant at the time it is signed. In the file noted, the producer's statement regarding the computer screen displayed to the applicant at the time of application was missing the hypothetical interest rate, number of years illustrated and the number of years of premiums.

**2 Violations – Insurance Company Law, Section 408-A(e)(3)(ii)**

The following applies if an illustration is used by a producer in the sale of a life insurance policy but the policy applied for is other than as illustrated. If the policy is issued, a basic illustration conforming to the policy as issued shall be sent with the policy and signed by the policy owner no later than the time the policy is delivered. A copy shall be provided to the policy owner no later than the time the policy is delivered and to the insured as soon as practical after the policy is delivered. The 2 files noted did not contain any evidence of illustration delivery at the time the policy was delivered.

**19 Violations – Insurance Company Law, Section 408-A(e)(5) (40 P.S. §625-8)**

A copy of the basic illustration and a revised basic illustration, if any, signed as applicable, along with any certification that either no illustration was used or that the policy was applied for other than as illustrated, shall be retained by the insurer until three (3) years after the policy is no longer in force. The 19 files noted were missing the agent certification and the applicants acknowledgment in regards to the illustration used.

**1 Violation – Insurance Company Law, Section 409-A (40 P.S. §625-9)**

**Replacements With the Same Insurer or Insurer Group.** When there is solicitation for the replacement of an existing insurance policy or annuity with the same insurer or insurer group, the insurer shall, through its producers where appropriate, provide a “Notice Regarding Replacement of Life Insurance and Annuities” in the form set forth under Title 31, Pennsylvania Code, Chapter 81 (relating to replacement of life insurance and annuities). The file noted did not contain the required replacement notice.

**2 Violations – Insurance Company Law, Section 410D(a)(3) (40 P.S. §510c)**

Individual fixed dollar life insurance policies or endowment insurance policies which are offered as replacements for an existing life insurance policy or annuity contract with an insurer or insurer group other than the one which issued the original policy or contract shall not be delivered in the Commonwealth of Pennsylvania unless they shall have prominently printed on the first page of such policy or attached thereto a notice stating in substance that the policyholder shall be permitted to return the policy within at least twenty (20) days of its delivery. The 2 files noted did not contain evidence of the required 20 day "free look" statement being printed or attached to the issued policy contracts .

## **I. Life Policies Declined**

The Company was requested to provide a list of all policies declined during the experience period. The Company identified 47 individual life policies declined. A random sample of 25 files was requested, received, and reviewed. The files were reviewed to ensure declinations were not the result of any discriminatory underwriting practice and the proper return of any unearned premium. No violations were noted.

## **J. Life Policies Terminated**

The Company was requested to provide a list of all policies terminated during the experience period. The Company identified a universe of 1,192 life insurance policies terminated. A random sample of 50 files was requested received, and reviewed. The policies were reviewed to ensure compliance with contract provisions, termination laws and regulations, and proper return of any unearned premium. The following violations were noted:

### **2 Violations - Insurance Department Act, Section 903 (40 P.S. §323.3)**

(a) Every Company or person subject to examination in accordance with this act must keep all books, records, accounts, papers, documents and any or all computer or other recordings relating to its property, assets, business and affairs in such manner and for such time periods as the department, at its discretion, may require in order that its authorized representatives may readily ascertain whether the Company or person has complied with the laws of this Commonwealth. The 2 files noted were missing termination documentation.

### **K. Life Policies Not-Taken**

The Company was requested to provide a list of all policies not-taken during the experience period. The Company identified 869 individual life policies not-taken. A random sample of 50 files was requested, received and reviewed. A not-taken policy by definition is a contract that is issued and the insured requests cancellation. The files were reviewed to ensure compliance with the free look provisions of the contract. No violations were noted.

### **L. Life Policies Issued as Replacements**

The Company identified a universe of 376 life policies issued as replacements during the experience period. A random sample of 75 life replacement files was requested, received and reviewed. Of the 75 life replacement policy files reviewed, 16 were not-taken and reissued under a different contract number. The remaining 59 replacement policy files were reviewed to determine compliance to issuance, underwriting, and replacement statutes and regulations. The following violations were noted:

#### **5 Violations- Title 31, Pennsylvania Code, Section 81.4(b)(1)**

If replacement is involved, the agent or broker shall: present to the applicant, not later than at the time of taking the application, a Notice Regarding Replacement of Life Insurance and Annuities. The replacement form was dated after the application date in the 5 files 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 applications did not contain an agent's statement regarding replacement in the 2 files noted.

**4 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 3 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 documented in the 4 files noted.

**5 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 5 files noted did not contain a copy of the required notice of replacement.

**1 Violation – 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 file noted did not contain a disclosure form.

**23 Violations -Title 31, Pennsylvania Code, Section 83.3(a)**

A disclosure statement shall be a document which shall describe the purpose and importance of the disclosure and describe the significant elements of the policy and riders being offered. The disclosure statements were incomplete in the 23 files noted.

**46 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 46 files noted did not contain a copy of the required agent's certification of disclosure.

**6 Violations – Title 31, Pennsylvania Code, Section 83.55**

(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.

(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. The 6 files noted did not contain evidence of the Cost Surrender Comparison Index Disclosure delivery.

**6 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 6 files noted.

**2 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 policy delivery could not be established in the 2 files noted.

**4 Violations– Insurance Company Law, Section 406-A (40 P.S. §625-6)**

No alteration of any written application for a life insurance policy or annuity shall be made by any person other than the applicant without the applicant’s written consent. The applications in the 4 files noted contained alterations without the applicants written consent.

**10 Violations –Insurance Company Law, Section 408-A(e)(1)(ii) (40 P.S. §625-8)**

If the policy is issued other than as applied for, a revised basic illustration conforming to the policy as issued shall be mailed or delivered with the policy. The revised illustration shall conform to the requirements for basic illustrations contained in this act and shall be labeled “Revised Illustration.” The statement

required by subsection (c)(4) shall be signed and dated by the policy owner and producer no later than the time the policy is delivered. A copy shall be provided to the policy owner no later than the time the policy is delivered and to the insurer as soon as practical after the policy is delivered. Of the 10 files noted, 5 files did not contain the signed certification and acknowledgement of the delivery of an illustration and 5 files contained revised illustrations but the illustrations were not labeled as "Revised Illustration".

**28 Violations – Insurance Company Law, Section 408-A(e)(2)(i)**

The following applies if no illustration is used by a producer in the sale of a life insurance policy or if a computer screen illustration is displayed. The producer shall certify in writing on a form provided by the insurer that no illustration was used in the sale of the life insurance policy. On the same form the applicant shall acknowledge an understanding that an illustration conforming to the policy as issued will be provided no later than at the time of policy delivery.

In the 28 files noted, the agent certified on the Company Sales Illustration Certification Form 97-IC PA that no illustration was provided to the applicant.

The agent is required to certify that no illustration was used in the sale of the life insurance policy.

**1 Violation– Insurance Company Law, Section 408-A(e)(2)(ii) (40 P.S. §625-8)**

The following applies if no illustration is used by a producer in the sale of a life insurance policy or if a screen illustration is displayed. Where a computer screen is used, the producer shall certify in writing on a form provided by the insurer that a computer screen illustration was displayed. Such form shall require the producer to provide, as applicable, the generic name of the policy and any riders illustrated, the guaranteed and non-guaranteed interest rates illustrated, the number of policy

years illustrated, the initial death benefit, the premium amount illustrated and the assumed number of years of premiums. On the same form, the applicant shall further acknowledge that an illustration matching that which was displayed on the computer screen will be provided no later than the time the application is provided to the insurer. A copy of this signed form shall be provided to the applicant at the time it is signed. The agents certification and applicants acknowledgment of the use of a screen illustration in the sale of a life insurance policy was dated after the time of application in the file noted.

**3 Violations – Insurance Company Law, Section 408-A(e)(5) (40 P.S. §625-8)**

A copy of the basic illustration and a revised basic illustration, if any, signed as applicable, along with any certification that either no illustration was used or that the policy was applied for other than as illustrated, shall be retained by the insurer until three (3) years after the policy is no longer in force. The 3 files noted were missing the agent certification and the applicants acknowledgment in regards to the illustration used at the time of application.

**2 Violations – Insurance Company Law, Section 410D(a)(2) (40 P.S. §510c)**

Individual fixed dollar life insurance or endowment policies which are offered as replacements for an existing life insurance policy or annuity contract with the same insurer or insurer group shall not be delivered in the Commonwealth of Pennsylvania unless they shall have prominently printed on the first page of such policy or attached thereto a notice stating in substance that the policyholder shall be permitted to return the policy within at least forty-five (45) days of its delivery. The policies issued did not contain the required 45 day "free look" statement in the 2 files noted.

## **M. Term Life Conversions**

The Company identified a universe of 169 individual term life conversion policies issued during the experience period. A random sample of 50 conversion files was requested, received and reviewed. The files were reviewed to determine compliance to issuance and underwriting statutes and regulations. The following violations were noted:

### **3 Violations - Insurance Company Law, Section 408-A(e)(1)(i) (40 P.S. §625-8)**

If the policy is applied for as illustrated, a copy of that illustration, signed in accordance with this section, shall be submitted to the insurer no later than the time the policy application is sent to the insurer. A copy shall also be provided to the applicant no later than the time the application is signed by the applicant. The agent certification and applicants acknowledgement of the illustration used, was signed and dated after the application date in the 3 files noted.

### **4 Violations - Insurance Company Law, Section 408-A(e)(1)(ii) (40 P.S. §625-8)**

If the policy is issued other than as applied for, a revised basic illustration conforming to the policy as issued shall be mailed or delivered with the policy. The revised illustration shall conform to the requirements for basic illustrations contained in this act and shall be labeled "Revised Illustration." The statement required by subsection (c)(4) shall be signed and dated by the policy owner and producer no later than the time the policy is delivered. A copy shall be provided to the policy owner no later than the time the policy is delivered and to the insurer as soon as practical after the policy is delivered. Of the 4 files noted, 3 files

contained a revised illustration but the illustration was not labeled as “Revised Illustration” and 1 file did not contain a signed certification and acknowledgement of the delivery of an illustration.

**2 Violations – Insurance Company Law, Section 408-A(e)(5) (40 P.S. §625-8)**

A copy of the basic illustration and a revised basic illustration, if any, signed as applicable, along with any certification that either no illustration was used or that the policy was applied for other than as illustrated, shall be retained by the insurer until three (3) years after the policy is no longer in force. The 2 files noted were missing the agent certification in regards to the illustration used.

**N. Disability Policies Issued**

The Company was requested to provide a list of all policies issued during the experience period. The Company identified a list of 13 disability income policies issued. All 13 policy files were requested, received, and reviewed. The policy files were reviewed to determine compliance to issuance, underwriting, and replacement statutes and regulations. The following violations were noted:

**11 Violations - Title 31, Pennsylvania Code, Section 88.181**

No policy may be delivered or issued for delivery in this commonwealth unless an appropriate outline of coverage, as prescribed by this chapter, either accompanies the policy or contract or is delivered at the time the application is made. The delivery of the outline of coverage could not be verified in the 11 files noted.

**1 Violation – Accident and Health Filing Reform Act, No. 159, Section 3  
(40 P.S. §3803)**

(A) Each insurer and HMO shall file with the Department any form which it proposes to issue in this Commonwealth except a type or kind of form which, in the opinion of the Commissioner, does not require filing.

The file noted was issued a policy based on an application form not filed for use.

**O. Disability Policies Terminated**

The Company was requested to identify all policies terminated during the experience period. The Company identified 198 disability income policies terminated. A random sample of 50 terminated files was requested, received and reviewed. The files were reviewed to ensure that terminations were not the result of any discriminatory underwriting practice. The following violations were noted:

**7 Violations – Insurance Department Act, Section 903 (40 P.S. §323.3)**

Every Company or person subject to examination in accordance with this act must keep all books, records, accounts, papers, documents and any or all computer or other recordings relating to its property, assets, business and affairs in such manner and for such time periods as the department, at its discretion, may require in order that its authorized representatives may ascertain whether the Company or person has complied with the laws of this Commonwealth. The 7 files noted did not include any verification of termination information.

The following is a synopsis of termination reasons for the files reviewed.

<b>Number</b>	<b>Reason Terminated</b>	<b>Percent</b>
14	Insured Request	33%
27	Lapsed	63%
1	Cancellation External Replacement	2%
1	Military Suspension and Reinstatement	2%
43	Total	100

#### **P. Disability Policies Not-Taken**

The Company was requested to provide a list of all policies not-taken during the experience period. The Company identified 7 disability income policies not-taken. All 7 files were requested, received, and reviewed. A not-taken policy by definition is a contract that is issued and the insured requests cancellation. The files were reviewed to ensure compliance with the free look provisions of the contract. No violations were noted.

#### **Q. Disability Policies Declined**

The Company was requested to provide a list of all policies declined during the experience period. The Company identified 7 disability income policies declined. All 7 files were requested, received and reviewed. The files were reviewed to ensure declinations were not the result of any discriminatory underwriting practice and the proper return of any unearned premium. No violations were noted.

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

The Company was requested to provide copies of their internal audit and compliance procedures. The audits and procedures 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.

## 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 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 the following claim manuals:

1. Dental Claim Handling Workflow Manual
2. Dental Claimfacts System Processing Manual
3. Dental Approver Manual
4. Group Disability Claims Audit Manual
5. Group LTD Claims Procedures and Training Manual
6. Short Term Disability (STD) Training Manuals (8 Floppy Disks)
7. Group Life Claims Audit Manual
8. Group Life Claims Training Manual
9. Claims Procedural Bulletins
10. Claimfacts Coding and Processing Manual
11. VSP Provider Reference Manual (Vision)
12. VSP Plan Information Manual (Vision)

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 9 areas:

- A. Individual Life Claims
- B. Group Life Claims
- C. Group Medical Claims
- D. Group Short Term Disability Claims
- E. Group Long Term Disability Pend/Denied Claims
- F. Group Long Term Disability Paid Claims
- G. Prescription Claims
- H. Dental Claims
- I. Vision Claims

All claim files sampled were reviewed for compliance with requirements of the Unfair Insurance Practices Act, No. 205 (40 P.S. §1171). The insured submitted claims were reviewed for compliance with Title 31, Pennsylvania Code, Chapter 146, Unfair Claims Settlement Practices and the provider submitted claims were reviewed for compliance with Act 68, Section 2166 (40 P.S. §991.2166), Prompt Payment of Provider Claims. The life claims were additionally reviewed for compliance with Insurance Company Law, Section 411B, Payment of Interest (40 P.S. §511b).

#### **A. Individual Life Claims**

The Company was requested to provide a list of all life claims received during the experience period. The Company identified a universe of 46 individual life claims. All 46 life claim files were requested, received and reviewed. The claim files were reviewed for compliance with Title 31, Pennsylvania Code, Chapter 146 and Insurance Company Law, Section 411B, Payment of Interest. The following violations were noted:

### **6 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 6 files noted were absent any evidence this requirement was complied with.

### **B. Group Life Claims**

The Company was requested to provide a list of life claims received during the experience period. The Company provided a list of 213 group life claims. Of the 213 group life claims identified, 76 were duplicate claims. The 137 unique group life claims were requested, received, and reviewed. The claim 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). No violations were noted.

### **C. Group Medical Claims**

The Company was requested to provide a list of claims received during the experience period. The Company identified a universe of 5,630 medical claims. A random sample of 100 claims was requested, received and reviewed. The 100 claim files were submitted by providers and reviewed for compliance with Act 68, Prompt Payment of Claims and Title 31, Pennsylvania Code, Chapter 146. No violations were noted.

### **D. Short Term Disability Claims**

The Company was requested to provide a list of claims received during the experience period. The Company identified a universe of 4,491 short-term disability claims. The 4,491 claims included a number of ongoing disability claims on the same individual. Of the 4491 claims listed, 1305 claims were identified as the initial disability claim for each individual. A random sample of 50 claims was requested, received and reviewed. The claim files were reviewed for compliance with Title 31, Pennsylvania Code, Chapter 146. The following violation was noted:

#### **1 Violation - 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 file noted was absent any evidence this requirement was complied with.

## **E. Group Long Term Disability Pend/Denied Claims**

The Company was requested to provide a list of claims received during the experience period. The Company identified a universe of 175-group long-term disability pend and denied claims. The 175 claims included more than one selection for the same individual. Of the 175 claims listed, 139 claims were identified as the initial long-term disability claim for each individual. A random sample of 25 claims was requested, received, and reviewed. The claim files were reviewed for compliance with Title 31, Pennsylvania Code, Chapter 146.

The following violations were noted:

### **6 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 6 files noted were absent any evidence this requirement was complied with.

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

Within 15 working days after receipt by the insurer of properly executed proofs of loss, the insurer shall advise the first-party claimant of the acceptance or denial of the claim. The 8 files noted were absent any evidence this requirement was complied with.

## **F. Group Long Term Disability Paid Claims**

The Company was requested to provide a list of claims received during the experience period. The Company identified a universe of 328 group long-term disability paid claims. The 328 claims included a number of ongoing disability claims on the same individual. Of the 328 claims listed, 88 claims were identified as the initial disability claim for each individual. A random sample of 25 claims was requested, received and reviewed. The claim files were reviewed for compliance with Title 31, Pennsylvania Code, Chapter 146. The following violations were noted:

### **1 Violation - 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 file noted was absent any evidence this requirement was complied with.

### **6 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 6 files noted were absent any evidence this requirement was complied with.

## **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 insurer shall advise the first-party claimant of the acceptance or denial of the claim. The 2 files noted were absent any evidence this requirement was complied with.

### **G. Prescription Claims**

The Company was requested to provide a list of claims received during the experience period. The Company identified a universe of 33,874 prescription claims for the 6 month period of July 1, 2002 through December 31, 2002 and 31,669 prescription claims for the 6 month period of January 1, 2003 through June 30, 2003. The prescription benefit is managed and administered through an agreement with Merck Medco, a prescription benefits management vendor. The insured pays a deductible, copay and/or co-insurance for their prescription when they have it filled at a participating Merck Medco network pharmacy. No violations were noted.

### **H. Dental Claims**

The Company was requested to provide a list of dental claims received during the experience period. The Company identified a universe of 186,718 dental claims. A random sample of 75 claims was requested and received. Of the 75 claims received, 3 were predetermination claims and not actual claims for a service performed. The remaining 72 claim files were reviewed for compliance with Act 68, Prompt Payment of Claims and Title 31, Pennsylvania Code, Chapter 146. No violations were noted.

## **I. Vision Claims**

The Company was requested to provide a list of vision claims received during the experience period. The Company identified a universe of 127,820 vision claims. A random sample of 100 claims was requested and received. The provider submitted claim files were reviewed for compliance with Act 68, Prompt Payment of Claims. The insured submitted claim files were reviewed for compliance with Title 31, Pennsylvania Code, Chapter 146. 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 implement procedures to ensure compliance with the fraud statement notice requirements of Title 18, Pa. C. S., §4117(k).
2. The Company must review and revise internal control procedures to ensure compliance with requirements of Title 31, Pennsylvania Code, Chapter 146, Unfair Claims Settlement Practices.
3. The Company must review and revise Licensing procedures to ensure compliance with Insurance Department Act, Sections 605, Section 606 and Section 623 (40 P.S. §§235, 236 and 253).
4. The Company must review and revise procedures to ensure all books, records, accounts, papers, documents and any or all computer or other recordings relating to the property, assets, business and affairs of the Company are maintained in such manner and for such period of time to ensure compliance with Section 903(a), (40 P.S. §323.3) of the Insurance Department Act.
5. The Company must review and revise all internal control procedures to ensure compliance with form filing requirements of Accident and Health Filing Reform Act, No. 159 (40 P.S. §3803)
6. The Company must review internal control procedures to ensure compliance with application alteration requirements of Insurance Company Law, Section 406-A (40 P.S. §625-6).
7. The Company must review and revise internal control procedures to ensure compliance with the replacement requirements of Title 31, Pennsylvania Code, Section 81.

8. The Company must review internal control procedures to ensure compliance with disclosure requirements of Title 31, Pennsylvania Code, Chapter 83.
9. The Company must review internal control procedures to ensure compliance with application and outline of coverage requirements of Title 31, Pennsylvania Code, Chapter 88.
10. The Company must review internal control procedures to ensure compliance with illustration certification and delivery requirements of Insurance Company Law, Section 408-A (40 P.S. §625-8).
11. The Company must implement internal control procedures to ensure compliance with replacement requirements of Insurance Company Law, Section 409-A (40 P.S. §625-9).
12. The Company must review internal control procedures to ensure compliance with the “Free Look” provisions of Insurance Company Law, Section 410D (40 P.S. §510c).

## **XII. COMPANY RESPONSE**



**Bernd R. Breitenbach**  
Director  
Market Conduct & Compliance

June 30, 2004

Mr. Daniel A. Stemcosky, AIE, FLMI  
Market Conduct Division Chief  
Commonwealth of Pennsylvania  
Bureau of Enforcement  
1321 Strawberry Square  
Harrisburg, PA 17120

Dear Mr. Stemcosky:

Re: Market Conduct Examination for Scope Period 7/1/2002 – 6/30/2003  
Examination Warrant No. 02-M12-300

We have completed our review of the Department's Report on Examination, dated June 15, 2004, for The Guardian Life Insurance Company of America and concur with the findings of the Report as written.

With respect to the recommendations section of the Report (re. pages 46 - 47), effort is currently underway to address and implement the various corrective actions recommended by the Department. Guardian wishes to represent to the Department that all recommendations will be acted upon and brought to closure during the months ahead.

We wish to thank the examination team for their professionalism and assistance in bringing this examination to an orderly and successful conclusion.

Sincerely yours,

Bernd R. Breitenbach  
Director Market Conduct and Compliance