STATE OF CONNECTICUT

INSURANCE DEPARTMENT

Bulletin L-11

January 22, 2002

To: ALL INSURERS AND HEALTH CARE CENTERS LICENSED IN CONNECTICUT

Re: APPOINTMENT REQUIREMENTS FOR PRODUCERS ACTING ON BEHALF OF AN INSURANCE COMPANY

The purpose of this Bulletin is to clarify certain issues relating to the requirements applicable to the appointment by insurers of insurance producers who solicit, market or negotiate the insurer's products. Because it has recently become apparent to the Insurance Department, following discussions with one insurance company, that there may exist misunderstandings among a small number of insurers about the need to appoint insurance producers who market, or have marketed, an insurer's products and the timing within which an appointment must be requested, this Bulletin is intended to (1) restate the current state of the law with regard to issues relating to producer appointments; and (2) provide more explicit guidance as to the particular activities that, when engaged in by an insurance producer, are construed as determinative that such producer is acting as an agent on behalf of an insurer and, consequently, must be duly appointed by such insurer pursuant to General Statutes § 38a-782(c).

Since the passage of Public Act 94-160, which eliminated the distinction between broker's and agent's licenses and introduced a single producer's license, the Insurance Department and the great majority of professionals who engage in an insurance business in the state of Connecticut have continued to interpret the insurance licensing laws as requiring that any producer who sells, solicits, negotiates or effects a contract of insurance offered by a specific company or companies be duly appointed to act on behalf of such company or companies.[1] Neither the provisions relating to appointments nor the interpretation of such provisions have changed. Therefore, any producer who markets or negotiates a specific insurer's product, or urges or asks clients to buy a specific insurance

[1] See, e.g., Conn. Joint Standing Committee Hearings, Insurance and Real Estate, Pt. 3, 1999 Sess., pp.827 and 939 (commenting on the proposed legislation changing the appointment process to allow companies to effect instant appointments, Dennis LaGanza, counsel to the Insurance Association of Connecticut, states that under the proposed law an insurance company may accept business from an unappointed producer, provided that it submits a timely application to appoint such producer, while under the provisions in force at that time an insurer would be required to reject any insurance application submitted by unappointed producers). See also Conn. Joint Standing Committee Hearings, Insurance and Real Estate, Pt. 3, 1999 Sess., p. 828 (comments by Warren Rupar, executive vice president of the Independent Insurance Agents of Connecticut, stating that in order to be able to produce business as an agent a producer must be appointed).

product from a specific insurer needs to be duly appointed by such insurer, regardless of whether, during a sales presentation, the product offered by such specific insurer was presented alone or as one of a number of products offered by different insurers.

Pursuant to statutory provisions contained in General Statutes §§ 38a-702 and 38a-782, an insurance producer must hold a direct appointment in writing by an insurance company in order to act on such company's behalf with regard to the marketing, solicitation, negotiation or effectuation of insurance or annuity contracts. Stated differently, because a producer who acts on behalf of an insurance company is acting as such company's agent, any producer who acts as an agent of an insurance company must be duly appointed by such company.

Because the authority of an agent, nonetheless, may be, and frequently is, implied from the conduct and words of the parties involved and from the circumstances attending a particular transaction, the performance of certain activities by an insurance producer indicates whether such producer is acting on behalf of an insurance company in a specific situation and needs, consequently, to hold a valid appointment. The following acts, if done by a producer with the knowledge or consent of an insurance company, or if they are subsequently approved or ratified by such company, are considered by the Insurance Department to be determinative as to the issue of whether an agency relationship has been established between the producer and the insurance company:

1. Using an insurance company's brochures, letterhead, applications, or other company identifying material during a sales presentation or in circumstances relating to performance of professional services by the producer;

2. Representing to a prospective buyer of insurance that the producer is acting on behalf of a certain insurer; or, in situations in which a reasonable person in the buyer's position would believe that the producer is acting on behalf of a specific insurance company, failing to notify a prospective buyer that the producer does not represent such company;

3. Presenting, discussing, recommending or explaining specific insurance products offered by a specific company;

4. Binding of coverage with a specific company;

5. Giving to a prospective buyer during an initial sales presentation advice, counsel or recommendations about benefits, terms, features, conditions, exclusions or costs of any specific insurance product offered by a specific insurance company or companies.

Any producer who does any of the acts enumerated above is considered, and has been considered since the passage of Public Act 94-160, to be acting as an insurance agent within the meaning of the term provided by the definition contained in General Statutes § 38a-782 and is required to hold a valid appointment from any and all of the

insurance companies on whose behalf the producer is either soliciting, negotiating, marketing or effecting an insurance, annuity or surety contract.

Additionally, the question has been raised as to whether an insurance producer employed by an insurance agency may act on behalf of an insurance company without holding a valid appointment, provided that the agency itself is appointed to represent such company. Because the appointment requirement applies to all individuals or persons acting on behalf of an insurance company, it has always been the position of the Insurance Department that such producer must be appointed personally if engaged in any of the above enumerated activities, regardless of affiliation with an appointed agency.

Finally, the Department has encountered situations in which appointments submitted pursuant to General Statutes § 38a-782(c) were determined to be invalid because of technical defects of the appointment request and were resubmitted by the company after the lapse of substantial amount of time. Please be advised that, where a producer has already acted on behalf of a company with regard to the sale of any insurance products and, having been submitted to the Insurance Department, an appointment is determined to be invalid because of any technical defects of the appointment request, the submitting insurance company must cure the defect and resubmit a new request for appointment within a reasonable period of time, not to exceed thirty days from the date in which the written request for appointment was rejected by the Department.

Susan F. Cogswell

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Insurance Commissioner