

**PROCEEDING BEFORE THE HONORABLE JANE L. CLINE  
INSURANCE COMMISSIONER  
STATE OF WEST VIRGINIA**

**IN RE: WEST VIRGINIA MUTUAL INSURANCE COMPANY  
NAIC #11972**

**ADMINISTRATIVE PROCEEDING  
11-MAP-02004**

**AGREED ORDER ADOPTING REPORT OF  
MARKET CONDUCT EXAMINATION, DIRECTING  
CORRECTIVE ACTION AND ASSESSING PENALTY**

NOW COMES The Honorable Jane L. Cline, Insurance Commissioner of the State of West Virginia, and issues this Agreed Order which adopts the Report of Market Conduct Examination, directs corrective action and assesses a penalty as a result of findings in the Report of Market Conduct Examination for the examination of West Virginia Mutual Insurance Company (hereinafter "WV Mutual"). The examination covered a thirty-six (36) month period of the Company's operations, from July 1, 2006 through June 30, 2009, based upon the following findings, to wit:

**PARTIES**

The Honorable Jane L. Cline is the Insurance Commissioner of the State of West Virginia (hereinafter the "Insurance Commissioner") and is charged with the duty of administering and enforcing, among other duties, the provisions of Chapter 33 of the West Virginia Code, as amended.

WV Mutual is a West Virginia domiciled property and casualty insurance company that provides medical professional liability insurance as permitted under

Chapter 33 of the West Virginia Code.

This market conduct examination was conducted and instituted as result of and per the authority of West Virginia Code § 33-2-9.

### **FINDINGS OF FACT**

A Market Conduct Examination concerning the operational affairs of WV Mutual for the period ending June 30, 2009, was conducted in accordance with West Virginia Code § 33-2-9 by examiners duly appointed by the Insurance Commissioner. The Market Conduct Examination of WV Mutual began on January 25, 2010 and concluded on June 8, 2011. The scope of the examination was comprehensive and was the first market conduct examination of WV Mutual since it began operation on July 1, 2004.

On June 8, 2011, the examiner filed with the Insurance Commissioner, pursuant to West Virginia Code § 33-2-9(j) (2), a Report of Market Conduct Examination.

On June 9, 2011, a true copy of the Report of Market Conduct Examination was sent to WV Mutual by certified and electronic mail and was received by WV Mutual on June 10, 2011.

On June 9, 2011, WV Mutual was notified pursuant to West Virginia Code § 33-2-9(j) (2) that it had thirty (30) days after receipt of the Report of Market Conduct Examination to file a submission or objection with the Insurance Commissioner. On June 10, 2011, WV Mutual responded to the Insurance Commissioner with no objections to the Report of Market Conduct.

The examination covered fifty-four (54) standards. The Company passed fifty-two (52) of those standards with eleven (11) of the passed standards being accompanied by recommendations for actions that the Company could adopt to improve its operations.

The two (2) standards examined which fell short of the error tolerance established for this examination and as such were considered to have failed the standards were associated with the review of Underwriting and Rating Practices.

WV Mutual hereby waives additional notice and review of the Report of Market Conduct Examination, notice of administrative hearing, any and all rights to an administrative hearing, and to appellate review of any matters contained herein this Agreed Order.

Any Finding of Fact that is more properly a Conclusion of Law is hereby adopted as such and incorporated in the next section.

### **CONCLUSIONS OF LAW**

The Insurance Commissioner has jurisdiction of the subject matter and the parties to this proceeding.

This proceeding is pursuant to and in accordance with West Virginia Code § 33-2-9.

WV Mutual failed to implement procedures to ensure the rates charged are in accordance with filed rates to comply with W. Va. Code § 33-20B-3(c). Furthermore, WV Mutual failed to file the Increased Limit Factors with its annual rate filings with the West Virginia Offices of the Insurance Commissioner to comply with W. Va. Code §§ 33-20B-3(a) and (c).

WV Mutual, additionally, failed to implement procedures to ensure consent

to rate forms are filed and approved by the West Virginia Offices of the Insurance Commissioner and implement procedures to ensure signed and completed consent to rate forms are retained by WV Mutual as required by W. Va. Code St. R. § 114-59-1, *et seq.*

Wherefore, the Commissioner is charged with the responsibility of verifying continued compliance with West Virginia Code and the West Virginia Code of State Rules by WV Mutual as well as all other provisions of regulation that WV Mutual is subjected to by virtue of their Certificate of Authority to operate in the State of West Virginia.

Any Conclusion of Law that is more properly a Finding of Fact is hereby incorporated as such and adopted in the previous section.

### **ORDER**

Pursuant to West Virginia Code § 33-2-9(j)(3)(A), following the review of the Report of Market Conduct Examination, the examination work papers, the Insurance Commissioner and WV Mutual have agreed to enter into this Agreed Order adopting the Report of Market Conduct Examination. The Parties have further agreed to the imposition of corrective action and an administrative penalty against WV Mutual as set forth below.

It is accordingly **ORDERED** as follows:

(A) The Report of Market Conduct Examination of WV Mutual for the period ending June 30, 2009, is hereby **ADOPTED** and **APPROVED** by the Insurance Commissioner.

(B) It is **ORDERED** that WV MUTUAL will **CEASE AND DESIST** from failing to comply with the statutes, rules and regulations of the State of West

Virginia concerning any business so handled in this State and more specifically the provisions enumerated herein this Order and/or the Report of Market Conduct Examination adopted herein where applicable.

(C) It is further **ORDERED** that WV Mutual shall continue to monitor its compliance with the West Virginia Code, the West Virginia Code of State Rules and all laws it is subject thereto.

(D) It is further **ORDERED** that within thirty (30) days of the next regularly scheduled meeting of its Board of Directors, WV Mutual shall file with the West Virginia Insurance Commissioner, in accordance with West Virginia Code § 33-2-9(j)(4), affidavits executed by each of its directors stating under oath that they have received a copy of the adopted Report of Market Conduct Examination and a copy of this **ORDER ADOPTING REPORT OF MARKET CONDUCT EXAMINATION, DIRECTING CORRECTIVE ACTION AND ASSESSING PENALTY**.

(E) It is further **ORDERED** that WV Mutual shall ensure compliance with the West Virginia Code and the Code of State Rules. WV Mutual shall specifically cure those violations and deficiencies identified in the Report of Market Conduct including providing appropriate restitution (where applicable) or other handling of the issue so as to bring the violations into compliance and conformity with the Commissioner's recommendations and any applicable law(s).

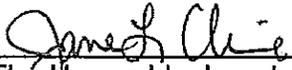
(F) It is further **ORDERED** that WV MUTUAL shall file a Corrective Action Plan which will be subject to the approval of the Insurance Commissioner. The Corrective Action Plan shall detail WV Mutual's changes to its procedures and/or internal policies to ensure compliance with the West Virginia Code and incorporate all

recommendations of the Insurance Commissioner's examiners and address all violations specifically cited in the Report of Market Conduct Examination. The Corrective Action Plan outlined in this Order must be submitted to the Insurance Commissioner for approval within thirty (30) days of the entry date of this Agreed Order. WV Mutual shall implement reasonable changes to the Corrective Action Plan if requested by the Insurance Commissioner within thirty (30) days of the Insurance Commissioner's receipt of the Corrective Action Plan. The Insurance Commissioner shall provide notice to WV Mutual if the Corrective Action Plan is disapproved and the reasons for such disapproval within thirty (30) days of the Insurance Commissioner's receipt of the Corrective Action Plan.

(G) The Insurance Commissioner has determined and it has been agreed by WV Mutual and therefore, it is hereby **ORDERED** that WV Mutual shall pay an administrative penalty to the State of West Virginia in the amount of **Five Thousand Dollars (\$5,000.00)** for non-compliance with the West Virginia Code as described herein. The payment of this administrative penalty is in lieu of any other regulatory penalty and is due within **THIRTY (30) calendar days** upon execution of this Order.

(H) It is finally **ORDERED** that all such review periods, statutory notices, administrative hearings and appellate rights are herein waived concerning this Report of Market Conduct Examination and Agreed Order. All such rights are preserved by the Parties regarding any future action taken, if any, on such Order by the Commissioner against WV Mutual

Entered this 30<sup>th</sup> day of June, 2011.

  
The Honorable Jane L. Cline  
Insurance Commissioner

**REVIEWED AND AGREED TO BY:**

**On Behalf of the WEST VIRGINIA OFFICE OF THE INSURANCE COMMISSIONER:**

  
Andrew R. Pauley, Associate Counsel  
Attorney Supervisor, APIR

Dated: 6/29/11

**On Behalf of THE WEST VIRGINIA MUTUAL INSURANCE COMPANY:**

By: R. Austin Wallace, MD  
[Print Name]

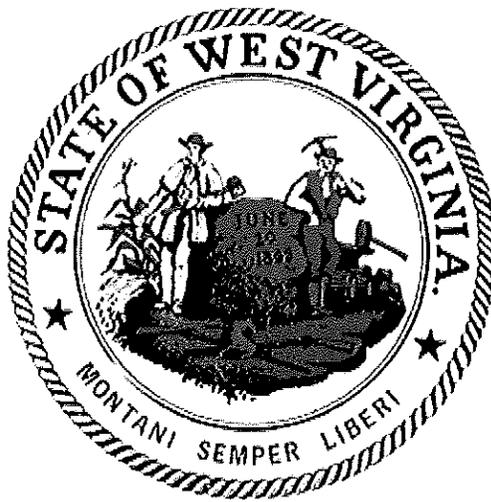
Its: Chairman of the Board

Signature: R. Austin Wallace, MD

Date: 6/29/11

# Report of Market Conduct Examination

As of  
June 30, 2009



**WEST VIRGINIA MUTUAL INSURANCE COMPANY**  
500 Virginia Street East, Suite 1200  
Charleston, WV 25301

**NAIC COMPANY CODE 11972**

**Examination Number WV014-M21**

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April 21, 2011

The Honorable Jane L. Cline  
West Virginia Insurance Commissioner  
1124 Smith Street  
Charleston, West Virginia 25301

Dear Commissioner Cline:

Pursuant to your instructions and in accordance with W.Va. Code § 33-2-9, an examination has been made as of June 30, 2009 of the business affairs of

WEST VIRGINIA MUTUAL INSURANCE COMPANY  
500 Virginia Street East, Suite 1200  
Charleston, WV 25301

hereinafter referred to as the "Company". The following report of the findings of this examination is herewith respectfully submitted.

## FOREWORD

The Company is a West Virginia-domiciled property and casualty insurance company that provides medical professional liability insurance.

This is a report "by test" of Company compliance with selected Standards contained in the National Association of Insurance Commissioners (NAIC) 2009 Market Regulation Handbook (Handbook) and Standards approved by the West Virginia Office of the Insurance Commissioner (WVOIC) which are based on applicable West Virginia Statutes and Administrative Rules, as referenced herein. Testing is based on guidelines contained in the Handbook. All tests applied are included in this report.

"W. Va. Code St. R." as used herein refers to the West Virginia Code of State Rules. "W. Va. Code" as used herein refers to the West Virginia Code Annotated.

## EXECUTIVE SUMMARY

This examination is the first market conduct examination of the Company. The examination fieldwork began January 25, 2010 and concluded on June 25, 2010. The Company operated as a private insurance carrier for over five years prior to the examination.

Because this examination was the first market conduct examination of the Company, the scope of this first examination was comprehensive (including all relevant Handbook standards), as opposed to a targeted review of limited aspects of the Company's operations. The examination covered fifty-four (54) standards from the 2009 NAIC Market Regulation Handbook. The Company passed fifty-two (52) of these standards with eleven (11) of the passed standards being accompanied by recommendations for actions that the Company could adopt to improve its operations. The remaining two (2) standards examined fell short of the error tolerance standard established for this examination and as such were considered to have failed the standards. The two (2) standards were associated with its rating.

Of the fifty-four (54) Standards in the report, two (2) findings resulted from the review of Underwriting and Rating Practices. This might be explained by the fact that there are more statutory requirements in the West Virginia Insurance Laws than for other areas, and the brief period of time the Company has operated as a commercial insurer. Likewise, the technical nature has many of the findings in each of the review areas is typical of a first market conduct examination.

In contrast to other lines of insurance, the West Virginia Unfair Claims Practices Act (WVUTPA) provisions do not apply in all instances as W. Va. Code 55-7B-6 (MPLA) will supersede the WVUTPA. The examiners tested claims for compliance with both of these laws.

The following list summarizes the issues that are raised in this report:

- The Company did not, in all instances, maintain all required information in its complaint register.
- The Company does not maintain adequate procedures for complaint handling
- The Company does not provide responses to complainant that are adequately specific
- The Company paid commissions directly to agencies rather than to producers without obtaining a valid assignment.
- The Company charged rates other than those that were on file with the WVOIC.
- The Company did not maintain adequate documentation in underwriting files to support declinations of coverage.
- The Company did not, in all instances, apply credits, debits and deviations on a consistent basis.
- The Company does not maintain adequate procedures related to "consent to rate" business to assure that policies issued on a consent-to-rate basis are done so fairly, and that the files are documented adequately.

Various non-compliant practices were identified. The Company is directed to take immediate corrective action to demonstrate its ability and intention to conduct business according to the West Virginia insurance statutes and rules.

### PURPOSE AND SCOPE OF EXAMINATION

Market conduct examiners with the WVOIC, who were assisted by RSM McGladrey, Inc., reviewed certain business practices of WVMIC. Sections § 33-2-9 empower the Commissioner to examine any entity engaged in the business of insurance. The findings in this report, including all work products developed in producing it, are the sole property of the WVOIC.

The purpose of this comprehensive examination was to determine the Company's compliance with West Virginia insurance laws related to its medical professional liability policies. Examination information contained in this report should serve only these purposes. The conclusions and findings of this examination are public record.

This examination was governed by, and performed in accordance with procedures developed by the WVOIC that are based on those of the National Association of Insurance Commissioners (NAIC), modified to conform to the requirements of West Virginia insurance laws. In reviewing material for this report, the examiners relied primarily on records and material maintained and/or submitted by the Company. The examination covered a thirty-six (36) month period of the Company's operations, from July 1, 2006 through June 30, 2009.

File sampling was based on review of new business, renewal, declination, cancellation and non-renewal files and claim files that were randomly selected from data provided by the Company. Sample sizes were chosen based on procedures developed by the NAIC. All applicable standards from the NAIC Market Regulation Handbook were applied. Upon review of each file, any concerns or discrepancies were noted on requests for information and delivered to the Company for review. Once the Company was advised of a concern contained in a request for information (RFI), the Company had the opportunity to respond. If after considering the Company's response the issue was not eliminated, a written finding was issued to the Company and again allowing opportunity for the Company to respond. For each finding, the Company was requested to agree, disagree, or otherwise justify the Company's noted action. At the conclusion of the fieldwork, the Company was provided a summary of the findings at the exit conference and a draft of the report was provided for the Company's review. The examination report is a report by test, reporting all areas reviewed and for each test, reports if the examiners found that the Company "passed", "failed" or "passed with recommendation".

This was the first official market conduct examination of the Company since it began operations on July 1, 2004. The Company was selected for examination because it is a West Virginia domestic insurer and there had been no prior market conduct examinations.

The basic business areas that were reviewed and tested under this examination were:

- Company Operations and Management
- Complaint Handling
- Producer Licensing
- Marketing and Sales
- Policyholder Services
- Underwriting and Rating
- Claims Practices
- C.A.R.E. Program

Certain unacceptable or non-complying practices may not have been discovered in the course of this examination. Failure to identify or criticize specific Company practices does not constitute acceptance of such practices by the Division. Examination findings may result in administrative action by the WVOIC.

Each business area has standards that the examination measured. Some standards have specific statutory guidance, others have specific Company guidelines, and/or yet others have contractual guidelines.

The focus of the examination is on the methods used by the Company to manage its operations for each of the business areas subject to this examination. This includes an analysis of how the Company communicates its instructions and intentions throughout its operations, how it measures and monitors the results of those communications, and how it reacts to and modifies its communications based on the resulting findings of the measurement and monitoring activities. The examination also determined whether this process is dynamic and results in enhanced compliance activities. Because of the predictive value of this form of analysis, focus is then made on those areas in which the process used by management does not appear to be achieving appropriate levels of statutory and regulatory compliance. Most areas are tested to verify the Company is in compliance with West Virginia statutes and rules.

## COMPANY PROFILE

The Company was created pursuant to West Virginia House Bill 601 and 2122 of 2001 and 2003, respectively, to provide medical liability insurance to physicians in West Virginia. This legislation provided the Company with initial capital and surplus of \$30.2MM stemming from three sources:

1. A \$24 MM loan from the West Virginia Tobacco Settlement Medical Trust Fund. In exchange, the Company issued a surplus note to the state of West Virginia, which is due by December 31, 2050 and carries interest at 1.425% per annum. The Company may not pay interest or principal without the approval of the Insurance Commissioner of West Virginia. In addition, until such time as the surplus note is fully repaid, the Company may not declare any policyholder dividends; sell, assign, transfer substantial assets of the Company; or write coverage outside the state, except for counties adjoining West Virginia. Premium taxes due

from all medical liability insurance carriers in West Virginia were used to replenish the amount appropriated from the Trust Fund.

2. A special one-time assessment of \$2,500 on all insurance carriers licensed under the chapter for the privilege of writing insurance in the state of West Virginia, with minor exceptions. The total expected amount of this assessment is \$3MM.
3. A one-time assessment of \$1,000 on all licensed physicians, with certain exceptions. The total expected amount of this assessment is \$3.2MM. Any physician who applies for insurance coverage from the Company and has not paid the assessment must pay it as a condition of obtaining coverage.

The Company began operations on July 1, 2004 by assuming certain assets and liabilities of the Board of Risk and Insurance Management (BRIM), an agency of the State of West Virginia, which had provided the majority of the professional liability insurance for physicians in the state. BRIM obligations under all applicable policies dating back to 2002 were completely extinguished and assumed by the Company; the transaction was accounted for as a novation under SSAP No. 62.

Policies transferred included any and all existing medical liability insurance covering physicians, physician corporations, and physician-operated clinics issued by BRIM, but not those covering hospitals and non-physician providers.

In addition to enabling the Company's creation, House Bills 601 & 2122 contained a number of tort reform provisions including,

1. Introduction of a cap on non-economic damages of \$250,000
2. Introduction of a cap on injuries sustained at designated trauma centers of \$500,000
3. Elimination of joint liability and replacement with several liabilities.
4. Introduction of Certificates of Merit from an expert healthcare professional.
5. Strengthening qualifications for experts
6. Reduction of awards by amounts paid in collateral payments to plaintiffs.
7. Establishment of a Patient Injury Compensation Fund Study, which will make recommendations on the feasibility of creating a patient injury fund. Such a fund would cover only economic damages awarded by a jury, but unpaid to the plaintiff due either to their exceeding the trauma cap or due to the move to several liability.
8. Limitation of medical injury litigation to injured patients.
9. Introduction of reasonable proof requirements for "Loss of Chance" theory.
10. Elimination of liability imputed via "Ostensible Agency" theory.

The Company earned \$44.2MM of gross premiums between January 1, 2008 and December 31, 2008, of which \$4.2MM were ceded to reinsurers, resulting in \$40.0MM net earned premium. 100% of the Company's earned premium related to the physicians' professional liability line of business.

Initially, the Company's underwriting and claim services were performed by Wells Fargo, formerly Acordia of West Virginia, Inc. The Company gradually migrated away from the use of Wells Fargo

for performance of most of the daily operational functions. As of 2008, the Company performs all the primary functions with internal personnel. Wells Fargo has no exclusive arrangement with the Company. The Company retained underwriting authority for all policies issued under the agreement and approval authority for all claim settlements and payments.

The Company does not participate in any voluntary or involuntary pools or associations.

The Company writes claims-made medical professional liability policies with primary limits of \$1MM per claim and \$3MM in aggregate. Non-standard medical malpractice policies with similar limits are available through a facultative reinsurance program. Currently the company insures approximately 1,650 physicians. A full-time Marketing Director is employed to coordinate marketing of Company products by independent agencies and agents. The Company markets itself as an insurer providing "value-added" services in the areas of claims settlement and risk management. Physician members of the Board of Directors chair the Underwriting and Claims Committees lending assurance to policyholder members that their unique medical professional liability insurance needs and situations are evaluated by their peers. When first licensed, the Company's operations were restricted only to West Virginia by provision of the capitalizing surplus note issued to the State of West Virginia. In 2009, the Company became licensed in Ohio, Kentucky and Virginia.

### **EXAMINER'S METHODOLOGY**

This examination is based on the standards and tests for a market conduct examination of a property and casualty insurer found in Chapters 16 and 17 of the NAIC Market Regulation Handbook and on applicable West Virginia statutes and rules.

"Sample" review indicates that a standard was tested through direct review of a random sample of files selected using Audit Command Language (ACL), a sampling methodology described in the Handbook. Examiners conducted sampling (Acceptance Samples) designed to rule out, with 95% confidence, that the proportion of errors in the various populations from which the samples were drawn does not exceed the recommended tolerance levels.

The tolerance level to pass the sampled underwriting and rating standards is equal to or less than a 10% error ratio. When the sample error ratio is calculated, the ratio is compared to the tolerance level. In those cases where the Acceptance Samples showed that the examiners could be 95% confident that the actual population proportion of errors does not exceed the tolerance level, the results are reported as "Passed Standard."

If the Acceptance Sample error ratio shows the examiner cannot be 95% confident that the actual population proportion of errors does not exceed the tolerance level, additional sampling is required in order to establish with 95% confidence that the population proportion of errors either exceeds or does not exceed the tolerance level. If no additional sampling is performed, the results are nonetheless reported as "Did Not Pass the Standard" since there is no conclusive finding that the Company did pass the standard. With this result, the Department has evidence of an error frequency sufficient to justify recommendations for corrective action, although the Department is

unable to statistically support a finding that the Company failed the standard. The need for a follow-up examination may be indicated in the examination report. In the event additional sampling confirms that the tolerance level is not exceeded, the results are reported as "Passed Standard." If the tolerance level is exceeded, the results are reported as "Failed Standard."

A "Generic" review indicates that a standard was tested through an analysis of general data gathered by the examiner or provided by the Company in response to queries by the examiner.

An "Electronic" review indicates that a standard was tested through use of a computer program or applied to a download of computer records of the Company. This type of review typically reviews 100% of the records of a particular type.

Standards were measured using tests designed to adequately measure how the Company met certain benchmarks. Each standard tested is described and the result of testing is provided under the appropriate standard. Only standards tested are shown in this report. The various tests utilized are set forth in the NAIC Market Regulation Handbook for a property and casualty insurer. Each standard applied is described, and the result of testing is provided under the appropriate standard. The standard, its statutory authority under West Virginia law, and its source in the NAIC Market Regulation Handbook are stated and contained within a bold border.

Each standard is accompanied by a "Comment" describing the purpose or reason for the standard. "Results" are indicated, examiner's "Observations" are noted, and in some cases, a "Recommendation" is made. Comments, Results, Observations and Recommendations are maintained with the appropriate standard.

## PREVIOUS EXAMINATION FINDINGS

The examination performed was the first examination of the Company by the WVOIC since it commenced issuing policies on July 1, 2004.

## COMPANY OPERATIONS AND MANAGEMENT

*Comments:* The evaluation of standards in this business area is based on a review of Company responses to information requests, questions, interviews, and presentations made to the examiner. This portion of the examination is designed to provide a view of what the Company is and how it operates and is not based on sampling techniques, but rather the Company's structure. This review is not intended to duplicate a financial examination review but is important in establishing an understanding of the examinee. Many troubled companies have become so because management has not been structured to adequately recognize and address the problems that can arise. Well-run companies generally have processes that are similar in structure. While these processes vary in detail and effectiveness from company to company, the absence or ineffective application of these processes is often reflected in failure of the various standards tested throughout the examination.

The processes usually include:

- A planning function where direction, policy, objectives and goals are formulated;
- An execution or implementation of the planning function elements;
- A measurement function that considers the results of the planning and execution; and
- A reaction function that utilizes the results of measurement to take corrective action or to modify the process to develop more efficient and effective management of its operations.

**Standard A 1**

*NAIC Market Regulation Handbook— Chapter XVI, § A, Standard 1*

The company has an up-to-date, valid internal or external audit program.

*W. Va. Code §§ 33-33-3 & 33-33-4*

**Comments:** The review methodology for this standard is generic. The standard has a direct statutory requirement as it pertains to annual audited financial statements. A company that has no audit function lacks the ready means to detect structural problems until problems have occurred. A valid internal or external audit function, and its use, is a key indicator of competency of management which the Commissioner may consider in the review of an insurer.

**Results: Pass**

**Observations:** In response to our request for information regarding its internal and external audit program, the Company provided external financial audits conducted for each year from 2006-2008, external reserve audits conducted from 2007-2009, and external reinsurance audits conducted in 2006-2008. Regarding internal audits performed, the Company provided its Internal Underwriting Audit Form and explained that each policy is audited by the Company to verify the basic policy information is recorded correctly.

**Recommendations: None**

**Standard A 3**

*NAIC Market Regulation Handbook— Chapter XVI, § A, Standard 3*

The company has antifraud initiatives which are reasonably calculated to detect, prosecute and prevent fraudulent acts

*W. Va. Code § 33-41-1, et seq.*

**Comments:** The review methodology for this standard is generic and sample. The standard has a direct statutory requirement. Written procedural manuals or guides and anti-fraud plans should provide sufficient detail to enable employees to perform their functions in accordance with the goals and direction of management. Appropriate anti-fraud activity is important for asset protection, as well as policyholder protection, and is an indicator of the competency of management, which the Commissioner may consider in the review of an insurer. Further, the insurer has an affirmative responsibility to report fraudulent activities of which it becomes aware.

**Results: Pass**

**Observations:** The Company had an anti-fraud program in place during the period under examination. The Company's anti-fraud policies and procedures were reviewed, along with its Fraud Contract Form submitted to the WVOIC and the anti-fraud disclosures included in its policy applications. The Company has not formally reported any fraud cases to the WVOIC, although it has unofficially made the OIC aware of potential fraud cases.

The Company's anti-fraud program and related disclosures in place during the examination period appears to comply with W.Va. Code § 33-41-1.

**Recommendations:** None

**Standard A 4**

*NAIC Market Regulation Handbook– Chapter XVI, § A, Standard 4*

**The company has a valid disaster recovery plan.**

**Comments:** The review methodology for this standard is generic. The standard does not have a direct statutory requirement. It is essential the Company have a formalized disaster recovery plan that details procedures for continuing operations in the event of any type of disaster. Appropriate disaster recovery planning is an indicator of the competency of management, which the Commissioner may consider in the review of an insurer.

**Results:** Pass

**Observations:** The Company had a valid disaster recovery plan which appears to satisfy this requirement.

**Recommendations:** None

**Standard A 5**

*NAIC Market Regulation Handbook– Chapter XVI, § A, Standard 5*

**Contracts between the company and entities assuming a business function including but not limited to MGAs, GAs, & TPAs and management agreements must comply with applicable licensing**

*W. Va. Code § 33-37-1, et seq.*

**Comments:** The review methodology for this standard is generic. The standard has a direct insurance statutory requirement. This standard is intended to assure that the Company utilizes subcontractors that are properly licensed and requires the subcontractors to comply with all applicable statutory authority.

**Results:** Pass

**Observations:** The Company had a MGA relationship with Wells Fargo/Acordia from July 2004 which effectively ended December 31, 2007, when the remaining contractors were transferred to WVMIC. The MGA performed all business functions for the Company initially and the business functions were brought in-house from July 2007 through January 2008. The MGA sub-contracted with a TPA, Inserveo, to perform claims functions but the Company did not maintain licensing

documentation for Inservco because the MGA was contractually responsible for the services performed by Inservco. The Company provided the West Virginia MGA licenses for 2005 through 2008 for Acordia/Wells Fargo as required by W. Va. Code § 33-37-2.

**Recommendations:** None

**Standard A 6**

*NAIC Market Regulation Handbook— Chapter XVI, § A, Standard 6*

**The company is adequately monitoring the activities of any entity that contractually assumes a business function or is acting on behalf of the company.**

**Comments:** The review methodology for this standard is generic. The standard has no direct insurance statutory requirement. This standard is intended to assure that the Company using subcontractors engages in a realistic level of oversight. Contracts should be reviewed to assure compliance with the MGA statutes governing contract content and oversight features. The focus is on the oversight impacting records and actions considered in a market conduct examination such as, but not limited to, trade practices, claim practices, policy selection and issuance, rating, complaint handling, etc. Particular emphasis is suggested concerning a subcontractor's dealings with policyholders and claimants.

**Results: Pass**

**Observations:** As mentioned in the previous section, the Company contracted the MGA, Wells Fargo/Acordia starting in July 2004 through December 31, 2007, to perform all business functions and the business functions were then brought in-house from July 2007 through January 2008. The agreement(s) in place with the MGA adequately addressed the responsibilities including record keeping requirements but the agreement(s) did not include provisions for conducting audits and there were no audits conducted by the Company. According to the Company, it required Wells Fargo/Acordia to perform a SAS-70 audit and provide the results.

The MGA sub-contracted with a TPA, Inservco, to perform claims functions until June 2007 but the MGA was contractually responsible for the services performed by Inservco. The Company contracted directly with Inservco for the period from July 1, 2007 through June 23, 2008 and the agreement was provided. This agreement addressed the ownership of records but was not specific as to what records were to be maintained. Furthermore, this agreement did not address specific responsibilities for the conducting of audits of Inservco by WVMIC. According to the Company, Inservco did not provide a business function beyond June of 2007, and therefore, audits would not be necessary.

**Recommendations:** None

**Standard A 7**

*NAIC Market Regulation Handbook— Chapter XVI, § A, Standard 7*

**Records are adequate, accessible, consistent and orderly and comply with state record retention requirements.**

*W. Va. Code St R. §§ 114-15-1 and 114-15-4 & W.Va. Code §§ 33-2-9 and 33-11-4.9*

**Comments:** The review methodology for this standard is generic. The standard does have a direct statutory requirement. This standard is intended to assure that an adequate and accessible record exists of the Company's transactions. The focus is on the records and actions considered in a market conduct examination such as, but not limited to, trade practices, claim practices, policy selection and issuance, rating, and complaint handling, etc. Inadequate, disorderly, inconsistent, and inaccessible records can lead to inappropriate rates and other issues, which can provide harm to the public.

**Results: Pass with Recommendation**

**Observations:** The Company's records were generally sufficient to allow the examiners to reconstruct the files. Most of the Company's policy and claims records were maintained electronically. However, not all of the records were retained in accordance with state record retention requirements as indicated in the testing of Complaints, Producer Licensing, Underwriting & Rating, and Claims Handling, involving Standards B.1, D. 1, D.7, F.7, F.10 and F.11, respectively.

**Recommendation:** It is recommended the Company maintain all records and documents in compliance with state record retention requirements.

**Standard A 8**

*NAIC Market Regulation Handbook— Chapter XVI, § A, Standard 8*

The company is licensed for the lines of business that are being written.

*W. Va. Code § 33-1-10*

**Comments:** The review methodology for this standard is generic. The standard has a direct statutory requirement. This standard is intended to assure that the Company operations are in conformance with the Company's certificate of authority.

**Results: Pass**

**Observations:** The Company's certificate of authority authorized it to offer casualty insurance business. The Company provided only medical malpractice insurance during the examination period and therefore, was operating within its certificate of authority.

**Recommendations:** None

**Standard A 9**

*NAIC Market Regulation Handbook— Chapter XVI, § A, Standard 9*

The Company cooperates on a timely basis with examiners performing the examinations.

*W. Va. Code § 33-2-9 & W. Va. Code St. R. § 114-15-1, et seq.*

**Comments:** The review methodology for this standard is generic. The standard has a direct statutory requirement. This standard is aimed at assuring that the Company is cooperating with the state in the completion of an open and cogent review of the Company's operations in West Virginia. Cooperation with examiners in the conduct of an examination is not only required by statute, it is conducive to completing the examination in a timely fashion and minimizing cost.

**Results: Pass**

**Observations:** The Company was extremely cooperative during the examination, and responded to the examiners' requests within five (5) working days as required, except for a few instances where an extension was necessary due to volume and/or subject of information involved the request.

**Recommendations:** None

**Standard A 11***NAIC Market Regulation Handbook– Chapter XVI, § A, Standard 11*

The Company had developed and implemented written policies, standards and procedures for the management of insurance information.

*W. Va. Code St R. § 114-57-1 and W. Va. Code St R. § 114-62-1*

**Comments:** The review methodology for this standard is generic. The standard has a direct insurance statutory requirement. This standard is intended to assure that the Company has established adequate protection of information it holds concerning its policyholders and minimizes any improper intrusion into the information pertaining to applicants, policyholders, and claimants.

**Results: Pass**

**Observations:** The Company had formal written procedures for the management, collection, use and disclosure of information gathered in connection with insurance transactions so as to minimize any improper intrusion into the privacy of applicants, claimants and policyholders.

**Recommendations:** None

**Standard A 12***NAIC Market Regulation Handbook– Chapter XVI, § A, Standard 12*

The Company has policies and procedures to protect the privacy of nonpublic personal information relating to its customers, former customers and consumers that are not customers.

*W. Va. Code § 33-11-4(12) et seq.; W. Va. Code St. R §§ 114-57-1 et seq. and 114-62-1 et seq.*

**Comments:** The review methodology for this standard is generic. The standard has a direct insurance statutory requirement. This standard is intended to assure that the Company provides adequate protection of information it holds concerning its policyholders and minimizes any improper intrusion into the privacy of applicants, policyholders, and claimants.

**Results: Pass**

**Observations:** The Company had formal written procedures for the management, collection, use and disclosure of information gathered in connection with insurance transactions so as to minimize the risk of improper intrusion into the privacy of applicants, claimants and policyholders.

**Recommendations:** None

**Standard A 13***NAIC Market Regulation Handbook— Chapter XVI, § A, Standard 13*

If the Company provides privacy notices to its customers and, if applicable, to its consumers who are not customers regarding the treatment of nonpublic financial information.

*W. Va. Code St. R. § 114-57-1, et seq. and 114-62-1 et seq.*

**Comments:** The review methodology for this standard is generic. The standard has a direct insurance statutory requirement. This standard is intended to assure that the Company provides adequate protection of information it holds concerning its policyholders and minimizes any improper intrusion into the privacy of applicants, policyholders, and claimants.

**Results: Pass with Recommendations**

**Observations:** The Company did not provide privacy notices to its applicants or policyholders regarding the treatment of non-public financial information during the examination period. However, the Company requested a rule clarification in September 2008 from the WVOIC related to West Virginia Privacy Rules. As a result of the WVOIC's January 2009 determination W. Va. Code St. R. § 114-57-1, *et seq.* and W. Va. Code St. R. § 114-62-1, *et seq.* did apply to them, the Company sent privacy notices to existing policyholders in June 2009 and notices were sent out with new policies issued after July 1, 2009 and will be sent with renewals on or after July 1, 2010.

**Recommendations:** As noted above, subsequent to the examination period, the Company has implemented procedures to comply with Standard A-13 involving the use of privacy notices. It is recommended that the Company continue to comply with the requirements of W. Va. Code St. R. § 114-57-1, *et seq.* and W. Va. Code St. R. § 114-62-1, *et seq.*

**Standard A 14***NAIC Market Regulation Handbook— Chapter XVI, § A, Standard 14*

If the Company discloses information subject to an opt out right, the regulated entity has the policies and procedures in place so that non public personal financial information will not be disclosed when a consumer who is not a customer has opted out, and the regulated entity provides opt out notices to its customers and affected consumers.

*W. Va. Code St. R. § 114-57-1, et seq.*

**Comments:** The review methodology for this standard is generic. The standard has a direct insurance statutory requirement. This standard is intended to assure that the Company provides adequate protection of information it holds concerning its policyholders and minimizes any improper intrusion into the privacy of applicants, policyholders, and claimants.

**Results: Pass**

**Observations:** The Company was not required to have and does not have a right to opt-out.

**Recommendations:** None

**Standard A 15***NAIC Market Regulation Handbook– Chapter XVI, § A, Standard 15*

The Company's use and disclosure of nonpublic personal financial information are in compliance with applicable statutes, rules, and regulation.

*W. Va. Code § 33-11-4(12) and W. Va. Code St. R. 114-57-1.*

**Comments:** The review methodology for this standard is generic. The standard has a direct insurance statutory requirement. This standard is intended to assure that the Company provides adequate protection of information it holds concerning its policyholders and minimizes any improper intrusion into the privacy of applicants, policyholders, and claimants.

**Results:** Pass

**Observations:** The Company had formal written procedures for the management, collection, use and disclosure of information gathered in connection with insurance transactions so as to minimize any improper intrusion into the privacy of applicants and policyholders, and claimants.

**Recommendations:** None

**Standard A 16***NAIC Market Regulation Handbook– Chapter XVI, § A, Standard 16*

The Company has policies and procedures in place so that nonpublic personal health information will not be disclosed except as permitted by law unless a customer or a consumer who is not a customer has authorized the disclosure.

*W. Va. Code St. R. § 114-57-1, et seq.*

**Comments:** The review methodology for this standard is generic. The standard has a direct insurance statutory requirement. This standard is intended to assure that the Company provides adequate protection of information it holds concerning its policyholders and minimizes any improper intrusion into the privacy of applicants, policyholders, and claimants.

**Results:** Pass

**Observations:** The Company had formal written procedures for the management, collection, use and disclosure of information gathered in connection with insurance transactions so as to minimize any improper intrusion into the privacy of applicants and policyholders.

**Recommendations:** None

**Standard A 17***NAIC Market Regulation Handbook– Chapter XVI, § A, Standard 17*

Each Licensee shall implement a written information security program for the protection of nonpublic customer information.

*W. Va. Code St. R. § 114-62-1, et seq.*

**Comments:** The review methodology for this standard is generic. The standard has a direct insurance statutory requirement. This standard is intended to assure that the Company provides adequate protection of information it holds concerning its policyholders and minimizes any improper intrusion into the privacy of applicants, policyholders, and claimants.

**Results: Pass**

**Observations:** The Company had formal written procedures for the management, collection, use and disclosure of information gathered in connection with insurance transactions so as to minimize any improper intrusion into the privacy of applicants, policyholders, and claimants

**Recommendations:** None

**COMPLAINT HANDLING**

**Comments:** Evaluations of the standards in this business area are based on Company responses to various information requests and the review of complaint files at the Company. In this business area, “complaints” is defined as any written communication primarily expressing a grievance.

<b>Standard B 1</b>	<i>NAIC Market Regulation Handbook– Chapter XVI, § B, Standard 1</i>
All complaints are recorded in the required format on the company complaint register.	
	<i>W. Va. Code § 33-11-4(10)</i>

**Comments:** The review methodology for this standard is generic. The standard has a direct statutory requirement. This standard is concerned with whether the Company records and maintains complaints or grievances as required by statute. An insurer is required to maintain a complete record of all complaints received. The record must indicate the total number of complaints since the last examination, the classification of each complaint by line of insurance, the nature of each complaint, the disposition of each complaint, and the time it took to process each complaint.

**Results: Pass with Recommendations**

The entire population of seventy-seven (77) complaints provided by the Company was reviewed. The results were as follows:

<b>Table B 1 - Complaint Sample Results</b>					
<b>Type</b>	<b>Population</b>	<b>N/A</b>	<b>Pass</b>	<b>Fail</b>	<b>% Pass</b>
Complaints	77	0	77	0	100%
<b>Total</b>	77	0	77	0	100%

**Observations:** The Company maintained a complaint data register which included WVOIC and consumer direct complaints, and an electronic log of complaints in accordance with the requirements of W. Va. Code § 33-11-4(10). W. Va. Code § 33-11-4(10) requires the Company to “...maintain a complete record of all the complaints which it has received since the date of its last examination.” The statute also requires that, “this record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of

these complaints and the time it took to process each complaint.” The definition of a complaint is “...any written communication primarily expressing a grievance.”

The examiner found no evidence that the Company did not record all of the complaints in its data register. However, the examiner noted the following technical violations regarding the Company’s complaint data register, which were not considered exceptions to this standard:

- The Company failed to identify the disposition for two (2) of the complaints and therefore, the examiner and the Company could not identify the time it took to process the complaints without reviewing the complaint file.
- The Company failed to identify the resolution and/or response date for eight (8) of the complaint files reviewed.

The information missing from the complaint register was provided by the Company.

**Recommendations:** It is recommended the Company implement procedures to ensure complaint information is completely and accurately recorded in its complaint register to ensure compliance with W. Va. Code § 33-11-4(10).

**Standard B 2**

*NAIC Market Regulation Handbook– Chapter XVI, § B, Standard 2*

The Company has adequate complaint handling procedures in place and communicates such procedures to policyholders.

*W. Va. Code § 33-11-4(10) and W. Va. Code St. R. §§ 114-15-4.3(a)(4) and 114-15-4.6*

**Comments:** The review methodology for this standard is generic. The standard has a direct statutory requirement. This standard is concerned with whether the Company has an adequate complaint handling procedure and whether the Company communicates complaint handling procedures to its policyholders.

**Results: Pass with Recommendations**

**Observations:** In response to the examiner’s request for its complaint handling procedures, the Company provided the following:

"Any written communication submitted by a policyholder or agent which primarily expresses a grievance is transmitted to the member of the staff most equipped to effectively respond to the complainant. Once the staff has formally responded to the complainant, the pertinent documents are submitted to the Director of Human Resources for documentation in the company complaint register. A file containing the original complaint, Company response, and all other relevant information is maintained by the Director of Human Resources.".....

The examiner requested the Company's policies and procedures regarding the communication of complaint rights and procedures to consumers and copies of standard communications. According to the Company's response, it generally communicates this information to its policyholders through

its agents and includes information on how to submit appeals and complaints in the letters sent to policyholders after each decision. Examples of the disclosures provided to policyholders were provided:

Two (2) examples were internal memos to file wherein the Company’s Underwriting Vice President notes that he informed the applicants/insureds who were unhappy with the rates offered, that they could appeal the rates in writing and the other memo stated that he informed the insured of the appeal process. There was no evidence that written procedures were provided regarding the appeal process nor was there any mention of the process to file complaints.

The third example was a copy of a declination letter from the Underwriting Vice President, wherein the Company informs the applicant that they may request a “courtesy review” but provides no further information regarding the appeal process or how to file a complaint with the Company. The last example was a copy of a letter from the Company’s counsel informing the insured “The Mutual has no internal process for appealing the (coverage) denial. However, if you choose to pursue this issue, you may contact the WVOIC...”

The Company does not have adequate complaint handling policies and procedures, nor does it provide sufficient information to consumers regarding the process and their rights regarding the filing of complaints.

**Recommendations:** It is recommended the Company implement complaint handling policies and procedures, and communicate such to consumers to comply with W. Va. Code § 33-11-4(10) and W. Va Code St. R. §§ 114-15-4.3(a)(4) and 114-15-4.6.

<b>Standard B 3</b>	<i>NAIC Market Regulation Handbook– Chapter XVI, § B, Standard 3</i>
<b>The Company takes adequate steps to finalize and dispose of the complaint in accordance with applicable statutes, rules and regulations, and contract language.</b>	
	<i>W. Va. Code § 33-11-4(10)</i>

**Comments:** The review methodology for this standard is generic. The standard has a direct statutory requirement. This standard is concerned with whether the Company has an adequate complaint handling procedure and whether the Company takes adequate steps to resolve and finalize complaints.

**Results: Pass with Recommendations**

The entire population of seventy-seven (77) complaints filed with the Company during the examination period was reviewed. The results were as follows:

<b>Table B 3 - Complaint Sample Results</b>					
<b>Type</b>	<b>Population</b>	<b>N/A</b>	<b>Pass</b>	<b>Fail</b>	<b>% Pass</b>
Complaints	77	0	77	0	100%
<b>Total</b>	77	0	77	0	100%

**Observations:** The Company finalized and disposed of the seventy-seven (77) complaints in accordance with W. Va. Code § 33-11-4(10). However, the examiner noted the following technical violation with regards to the Company's response letters:

- The Company's response to each of the forty-five (45) complaints where the original determination was "upheld," failed to address the issues raised in by the complainants in their correspondence. The Company's response letters to the complaints were generic and did not specifically address the issues raised in the correspondence by the complainants. Examples include the failure to provide the reasons for non-renewals or declinations, or the basis for decisions related to premium charges.

The Company disagreed with these exceptions, stating policyholders or applicants can provide their requests in writing and then the Underwriting Department will then bring the request before the Underwriting Committee. However, the Company acknowledges that if the request involves a declination or a non-renewal, the Committee response provides its decision but does not stipulate the reason for declination or nonrenewal, which, according to the Company, complies with West Virginia statute. Further, if the request was for a review of the declination or non-renewal prior to the Zaleski Supreme Court Decision, the physician or representative would have appeared in person to meet with the Committee and therefore, would have first-hand knowledge of the consideration by the Committee. According to the Company then, additional detail in the response letters is not necessary.

Policyholders should not be compelled to file appeals and go through that process to obtain specific responses to their complaints, regardless of whether the complaints involve declinations, non-renewals, debits, rate class, etc. It should be noted that the examiners found the Company did not provide the specific reason(s) or basis for declining coverage in the declination letters sent to applicants.

The Company's generic and non-specific responses do not adequately address the complainants' concerns and therefore, do not comply with NAIC Market Regulation Handbook standards, which require the Company to take adequate steps to finalize and dispose of complaints. Regardless of whether the policyholder or applicant decides to go through the Company's appeals process, they are entitled to a specific, detailed response to the issues raised in the complaint letter.

**Recommendations:** Therefore, it is recommended the Company implement procedures to ensure responses to complaints specifically address the issue(s) raised.

**Standard B 4**

The time frame within which the Company responds to complaints is in accordance with applicable statutes, rules and regulations.

*NAIC Market Regulation Handbook-- Chapter XVI, § B, Standard 4*

*W. Va. Code § 33-11-4(10)*

**Comments:** The review methodology for this standard is sample and generic. The standard does not have a direct statutory requirement; however, timeliness is inferred. In the case of complaints

concerning claims, direct time requirements are found in regulation. This standard is concerned with whether the Company responded to complaints timely. West Virginia's Consumer Services section uses a fifteen (15) working days standard for responses to complaints. As this is not a direct statutory requirement, failure to meet this standard is not considered to be a violation.

**Results: Pass with Recommendations**

The entire population of seventy-seven (77) complaints were reviewed and tested. The results were as follows:

Type	Population	N/A	Pass	Fail	% Pass
WVOIC Complaints	4	0	3	1	75%
Appeals	66	0	26	40	39%
Non Appeals	7	0	5	2	71%
<b>Total</b>	<b>77</b>	<b>0</b>	<b>34</b>	<b>43</b>	<b>44%</b>

**Observations:** The Company's complaint register included four (4) complaints received from the WVOIC during the review period. Most items entered into the complaint register by the Company during the review period involved underwriting and rating complaints for which the Company maintains an appeals process as described in its rate filings. As depicted above, sixty-six (66) or 86% of the complaints included in the Company's complaint register were appeals and seven of the 77 or 9% of the complaints in the register were non-WVOIC complaints.

The Company responded to three (3) of four (4) or 75% of the WVOIC complaints within 15 working days. One complaint required 34 days for the Company to respond.

The Company responded to five (5) of seven (7) or 71% of the complaints which were not subject to the appeals process within 15 working days.

For those complaints which were handled through the Company's appeals process, the Company failed to fully document the communications related to the first response to the appeals in all instances. The Company practice is to advise the complainant that his or her complaint will be addressed at the next meeting of the Underwriting Committee. In some cases complainants attend the underwriting committee meetings in person, but attendance is not required. The Company advises the complainant in writing of the final decision of the Underwriting Committee within two or three days following the meeting of the Underwriting Committee. For forty (40) files, the examiner was unable to determine from the file documentation that a timely initial response was provided to the complainant. However, for many of these files, the examiner also noted that the complainant could not have attended the Underwriting Committee meeting or submitted additional information had an initial response not been provided.

**Recommendations:** It is recommended that the Company implement procedures for documentation of its initial response to all complaints, including those addressed through the Company’s appeals process, to ensure responses are issued within 15 working days.

**MARKETING AND SALES**

**Comments:** The evaluation of standards in this business area is based on a review of Company responses to information requests, questions, interviews, and presentations made to the examiner. This portion of the examination is designed to evaluate the representations made by the Company about its products. It is not typically based on sampling techniques but can be. The areas to be considered in this kind of review include all media, written and verbal advertising, and sales material.

**Standard C 1** *NAIC Market Regulation Handbook– Chapter XVI, § C, Standard 1*  
**All advertising and sales materials are in compliance with applicable statutes, rules and regulations.** *W. Va. Code § 33-11-1 et seq. & W. Va. Code St. R. § 114-9-1 et seq.*

**Comments:** Review methodology for this standard is generic and sample. The standard has a direct insurance statutory requirement. This standard is intended to assure compliance with the prohibitions on misrepresentation. It is concerned with all forms of media (print, radio, television, etc.).

**Results: Pass with Recommendation**

The entire population of forty-one (41) marketing and sales material provided by the Company was reviewed. The results were as follows:

<b>Table C 1 Marketing and Sales Results</b>					
<b>Type</b>	<b>Population</b>	<b>N/A</b>	<b>Pass</b>	<b>Fail</b>	<b>% Pass</b>
Company Generated Advertising	39	0	39	0	100%
Agent Generated Advertising	2	0	2	0	100%
<b>Total</b>	41	0	41	0	100%

**Observations:** The Company provided a copy of all marketing and sales materials used during the period under examination. Materials included annual reports, brochures, newsletters, rate cards, direct mailings, and advertisements that appeared mainly in the West Virginia Medical Journal. All of the Company's marketing and sales materials were reviewed by the examiners.

The Company's website [www.wvmic.com](http://www.wvmic.com) was also reviewed. Information contained in the Agent section of the website was outdated. The Company removed this information from its website as a result of the examiner's finding. In addition, according to the Company, its Marketing Director will periodically review the website to ensure information is current.

**Recommendations:** It is recommended that the Company regularly review information contained in its website to ensure that information and reference materials are current.

<p><b>Standard C 2</b>                  Company internal producer training materials are in compliance with applicable statutes, rules and regulations.</p>	<p><i>NAIC Market Regulation Handbook-- Chapter XVI, § C, Standard 2</i>  <i>W. Va. Code § 33-11-1 et seq. &amp; W. Va. Code St. R. § 114-9-1 et seq.</i></p>
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**Comments:** Review methodology for this standard is generic and sample. This standard has a direct insurance statutory requirement. This standard is intended to assure compliance with the prohibitions on misrepresentation. It is concerned with training or instructional representations made by the Company to its producers.

**Results: Pass**

The Company identified and provided three (3) internal producer training materials, which were reviewed. The results are as follows:

<b>Table C 2 Marketing and Sales Results</b>					
Type	Population	N/A	Pass	Fail	%Pass
Internal Producer Training Materials	3	0	3	0	100%
<b>Total</b>	3	0	3	0	100%

**Observations:** The Company's producer training materials were reviewed and no exceptions were noted.

**Recommendations:** None

<p><b>Standard C 3</b>                  Company communications to producers are in compliance with applicable statutes, rules and regulations.</p>	<p><i>NAIC Market Regulation Handbook-- Chapter XVI, § C, Standard 3</i>  <i>W. Va. Code § 33-11-1 et seq. &amp; W. Va. Code St. R. § 114-9-1 et seq.</i></p>
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**Comments:** Review methodology for this standard is generic and sample. The standard has a direct insurance statutory requirement. This standard is intended to assure compliance with the prohibitions on misrepresentations. It is concerned with representations made by the Company to its producers other than in a training mode.

**Results: Pass**

**Observations:** The Company uses Email to communicate with its producers. Examples reviewed were more informational in nature, rather than advertising and marketing communications. No exceptions were noted in this review.

**Recommendations:** None

**Standard C 4***NAIC Market Regulation Handbook– Chapter XVI, § C, Standard 4*

Company's mass marketing of insurance is in compliance with applicable statutes, rules and regulations.

*W. Va. Code § 33-11-1 et seq. and W. Va. Code St. R. § 114-9-1 et seq.*

**Comments:** Review methodology for this standard is generic and sample. The standard has a direct insurance statutory requirement. This standard is intended to assure compliance with the prohibitions on misrepresentations, fictitious arrangements, compulsory participation, and tie-in sales.

**Results:** Pass

**Observations:** The Company did not have a mass marketing program.

**Recommendations:** None

## PRODUCER LICENSING

**Comments:** The evaluation of standards is based on a review of WVOIC records and the Company responses to information requests, questions, interviews, and presentations made to the examiners. This portion of the examination is designed to test the Company's compliance with West Virginia producer licensing laws and rules.

**Standard D 1***NAIC Market Regulation Handbook– Chapter XVI, § D, Standard 1*

Company records of licensed and appointed (if applicable) producers agree with department of insurance records.

*W. Va. Code §§33-12-3 and 33-12-18*

**Comments:** Review methodology for this standard is generic and sample. This standard has a direct statutory requirement. This standard is aimed at assuring compliance with the requirement that producers be properly licensed and appointed. Such producers are presumed to be qualified, having met the test for such license. W. Va. Code § 33-12-3 states, "No person shall in West Virginia act as or hold himself out to be an agent, broker or solicitor nor shall any person in any manner solicit, negotiate, make or procure insurance covering subjects of insurance resident, located or to be performed in West Virginia, unless then licensed therefore pursuant to this article." The section further states, "No insurer shall accept any business from any agent who does not then hold an appointment as agent for such insurer pursuant to this article."

**Results:** Pass with recommendations

Table D 1 Producer Licensing Sample Results						
Type	Population	Sample	N/A	Pass	Fail	% Pass
Producers	127	127	0	122	5	96.1%
<b>Total</b>	127	127	0	122	5	96.1%

**Observations:** The Company provided a listing of 106 active agents and a listing of 21 agents terminated during the examination period. Seven (7) of the 21 terminated agents were terminated outside of the examination period. Although there were five (5) data entry errors identified in the producer listing(s) provided by the Company, these errors were not deemed material. As a result of these errors identified by the examiners, the Company is now tracking all producer data consistent with the Market Conduct Examiner's Handbook.

**Recommendations:** It is recommended the Company implement procedures to ensure its producer licensing records are current and accurate.

**Standard D 2**

*NAIC Market Regulation Handbook— Chapter XVI, § D, Standard 2.*

The producers are properly licensed and appointed (if required by state law) in the jurisdiction where the application was taken.

*W. Va. Code §§33-12-3 and 33-12-18*

**Comments:** Review methodology for this standard is sample. This standard has a direct statutory requirement, and it is file-specific. This standard is aimed at assuring compliance with the requirement that producers be properly licensed and appointed for business solicited in West Virginia. The Company must appoint the producer within fifteen (15) days of the date the producer submits their first application to the Company.

**Results: Pass**

Testing for this standard was conducted in conjunction with the underwriting testing on the sample of sixty (60) newly-issued policies and the sample of sixty (60) renewal policies. The results of the testing were as follows:

Table D 2 Producer Licensing Sample Results						
Type	Population	Sample	N/A	Pass	Fail	% Pass
Issued Policies	630	60	0	60	0	100%
Renewal Policies	5,908	60	0	60	0	100%
<b>Total</b>	6,538	120	0	120	0	100%

**Observations:** The producers for each of the sixty (60) new business and sixty (60) renewal policies were properly licensed and appointed with the Company at the time the new business was written/renewed. No exceptions were noted.

**Recommendations:** None

**Standard D 3** *NAIC Market Regulation Handbook– Chapter XVI, § D, Standard 3.*  
**Termination of producers complies with statutes regarding notification to the producer and notification to the state if applicable.** *W. Va. Code § 33-12-25 & W. Va. Code St. R. §114-2-1, et seq.*

**Comments:** Review methodology for this standard is generic and sample. This standard has a direct statutory requirement. It is generally file-specific. This standard is aimed at both avoiding unlicensed placements of insurance as well as ensuring that producers are treated fairly with respect to terminations. W. Va. Code § 33-12-25 requires the Company to notify the Commissioner, on a form prescribed by the Commissioner, within thirty (30) days of terminating the producer’s authority. The same code section further requires the producer to be notified simultaneously. Furthermore, W. Va. Code § 33-12-25 requires the Company to notify the Commissioner if the termination is for cause.

**Results: Pass**

All of the twenty-one (21) terminated producer files were reviewed to determine whether the Company was notifying the WVOIC on the required form, within thirty (30) days of termination and provided simultaneous notification to the producer. The results were as follows:

<b>Table D 3 Producer Licensing Sample Results</b>						
<b>Type</b>	<b>Population</b>	<b>Sample</b>	<b>N/A</b>	<b>Pass</b>	<b>Fail</b>	<b>% Pass</b>
Producer Terminations	21	21	9	12	0	100%
<b>Total</b>	21	21	9	12	0	100%

**Observations:** Nine (9) of the 21 terminated producers were the result of the producer's license lapsing and therefore, no notification to the WVOIC was required. None of the producers were terminated for cause. No exceptions were noted.

**Recommendations:** None

**Standard D 4** *NAIC Market Regulation Handbook– Chapter XVI, § D, Standard 4.*  
**The Company’s policy of producer appointments and terminations does not result in unfair discrimination against policyholders.** *W. Va. Code § 33-11-4 et seq.*

**Comments:** Review methodology for this standard is generic. This standard does not have a direct statutory requirement. It is generally not file-specific. This standard is concerned with potential geographical discrimination through the insurer’s selection and instructions to its producers. The tests are intended to expose indicators of such practice but may not be conclusive.

**Results: Pass**

**Observations:** The Company's policies and procedures regarding producer appointments and terminations were reviewed. Prior to this examination, the Company's procedures consisted entirely of the Agent Agreements. The Company prepared procedures regarding the producer appointments and terminations as a result of this examination. All of the Company's terminated producer files were reviewed, and producer appointments were verified for the various samples reviewed. No exceptions were noted.

**Recommendations:** None

**Standard D 5**

*NAIC Market Regulation Handbook— Chapter XVI, § D, Standard 5.*

**Records of terminated producers adequately document reasons for terminations.**

*W. Va. Code § 33-12-25 & W. Va. Code St. R. § 114-2-1, et seq. and 114-15-1 et seq.*

**Comments:** Review methodology for this standard is generic. This standard has a direct statutory requirement. It is generally file-specific. This standard is intended to aid in the identification of producers involved in unprofessional behavior, which is harmful to the public.

**Results:** Pass

**Observations:** Testing was conducted to verify the Company was notifying the WVOIC when producers were terminated and whether the Company was documenting the reason(s) for termination, including those for cause. The Company identified 21 producers whose appointment with the Company had been terminated. All of the 21 terminated agent files were reviewed. Nine (9) of 21 terminations were due to the agent's insurance license lapsing and therefore, no notice of termination was required. For the other 12 files, the Company provided notice to the WVOIC and the producer simultaneously within the required timeframe, using the termination form prescribed by the WVOIC. None of the producers were terminated for cause.

No exceptions were noted in this review.

**Recommendations:** None

**Standard D 6**

*NAIC Market Regulation Handbook— Chapter XVI, § D, Standard 6.*

**Producer accounts current (account balances) are in accordance with the producer's contract with the insurer.**

*W. Va. Code § 33-12-23(b)*

**Comments:** Review methodology for this standard is generic. This standard does not have a direct statutory requirement. It is generally file-specific. This standard is concerned with potential unfair practices in allowing producers to act outside the terms of the producer's contract with the Company.

**Results:** Pass with Recommendation

**Observations:** The sample of newly issued policies was reviewed and in each of the sixty (60) files reviewed, payment was sent directly to the Company with the Company as the payee. Therefore, no further review was done with regard to producer account balances.

The Company did not make commission payments directly to producers and did not have an agreement with producers to pay another party as required by W. Va. Code § 33-12-23(b). As a result of this Finding, the Company agreed to contact all appointed agents and request copies of assignment forms, which will then be added to the producer files.

**Recommendations:** It is recommended the Company implement procedures to ensure compliance with W.Va. Code § 33-12-23(b), by obtaining assignment forms from its producers.

**POLICYHOLDER SERVICE**

**Comments:** The evaluation of standards in this business area is based on review of Company responses to information requests, questions, interviews, and presentations made to the examiner and file sampling during the examination process. The policyholder service portion of the examination is designed to test a Company’s compliance with statutes regarding notice/billing, delays/no response, premium refund and coverage questions.

<b>Standard E 1</b>	<i>NAIC Market Regulation Handbook - Chapter XVI, § E, Standard 1</i>
<b>Premium notices and billing notices are sent out with an adequate amount of advance notice.</b>	<i>W. Va. Code § 33-11-7</i>

**Comments:** Review methodology for this standard is generic and sample. There is an indirect statutory requirement. This standard is intended to provide insureds with information in a timely fashion so they can make informed decisions.

**Results: Pass**

For this standard, testing was performed in conjunction with sampled files from Underwriting and Rating testing. Testing included sixty (60) newly issued policies and sixty (60) renewals. The results of testing are as follows:

<b>Table E 1 Policyholder Service Sample Results</b>						
<b>Type</b>	<b>Population</b>	<b>Sample</b>	<b>N/A</b>	<b>Pass</b>	<b>Fail</b>	<b>% Pass</b>
Issued Policies	630	60	0	60	0	100%
Underwriting Renewals	5,908	60	0	60	0	100%
<b>Total</b>	<b>6,538</b>	<b>120</b>	<b>0</b>	<b>120</b>	<b>0</b>	<b>100%</b>

**Observations:** The Company provided premium notices and billing notices with an adequate amount of advance notice. No exceptions were noted in this review.

**Recommendations:** None

<b>Standard E 2</b> Policy issuance and insured-requested cancellations are timely.	<i>NAIC Market Regulation Handbook - Chapter XVI, § E, Standard 2</i> <i>W. Va. Code § 33-11-7</i>
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**Comments:** Review methodology for this standard is generic and sample. There is no direct statutory requirement. This standard is intended to provide insureds with information in a timely fashion so they can make informed decisions.

**Results: Pass**

For this standard, testing was performed in conjunction with sampled files from Underwriting and Rating testing. Testing included sixty (60) newly issued policies, sixty (60) cancellations and sixty (60) insured requested non-renewals. The results of testing are as follows:

<b>Table E 2 Policyholder Service Sample Results</b>						
<b>Type</b>	<b>Population</b>	<b>Sample</b>	<b>N/A</b>	<b>Pass</b>	<b>Fail</b>	<b>% Pass</b>
Issued Policies	630	60	0	60	0	100%
Cancellations	670	60	0	60	0	100%
Insured Initiated Non-Renewals	194	60	0	60	0	100%
<b>Total</b>	1,494	180	0	180	0	100%

**Observations:** There were no exceptions regarding timeliness of the issuance of new business, nor were there exceptions noted in the review of cancellations and insured-initiated non-renewals.

**Recommendations:** None

<b>Standard E 3</b> All correspondence directed to the regulated entity is answered in a timely and responsive manner by the appropriate department.	<i>NAIC Market Regulation Handbook - Chapter XVI, § E, Standard 3</i> <i>W. Va. Code § 33-11-7</i>
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**Comments:** Review methodology for this standard is generic and sample. There is no direct statutory requirement. This standard is intended to provide insureds with information in a timely fashion so they can make informed decisions.

**Results: Pass**

**Observations:** Testing of correspondence was conducted in association with files sampled for testing throughout the examination process. The correspondence directed to the Company was answered in a timely and responsive manner by the appropriate department. No exceptions were noted in this review.

**Recommendations:** None

<b>Standard E 5</b>	<i>NAIC Market Regulation Handbook - Chapter XVI, § E, Standard 5</i>
<b>Determine if policy transactions were processed accurately and completely.</b>	<i>W. Va. Code § 33-11-7</i>

**Comments:** Review methodology for this standard is generic and sample. There is no direct statutory requirement. This standard is intended to provide insureds with information in a timely fashion so they can make informed decisions.

**Results: Pass**

For this standard, testing was performed in conjunction with sampled files from the Underwriting and Rating testing. Testing included sixty (60) cancellations, sixty (60) insured-initiated non-renewals and twenty-five (25) Company initiated non-renewals. The results of testing were as follows:

<b>Table E 5 Policyholder Service Sample Results</b>						
Type	Population	Sample	N/A	Pass	Fail	% Pass
Cancellations	670	60	0	60	0	100%
Insured Initiated Non-Renewals	194	60	0	60	0	100%
Company Initiated Non-Renewals	25	25	0	25	0	100%
<b>Total</b>	889	145	0	145	0	100%

**Observations:** The policy transactions were processed accurately and timely. No exceptions were noted during this testing.

**Recommendations:** None

<b>Standard E 7</b>	<i>NAIC Market Regulation Handbook - Chapter XVI, § E, Standard 7</i>
<b>Unearned premiums are correctly calculated and returned to appropriate party in a timely manner, and in accordance with applicable W. Va. statutes and rules, and verify unearned premiums were returned timely</b>	<i>W. Va. Code § 33-11-7</i>

**Comments:** Review methodology for this standard is generic and sample. There is no direct statutory requirement. This standard is intended to provide insureds with the proper amount of premium refund upon cancellation in a timely manner.

**Results: Pass**

For this standard, testing was performed in conjunction with sampled files from the Underwriting and Rating testing. Testing included sixty (60) cancellations. The results of testing were as follows:

Table E 7 Policyholder Service Sample Results						
Type	Population	Sample	N/A	Pass	Fail	% Pass
Cancellations	670	60	0	60	0	100%
<b>Total</b>	670	60	0	60	0	100%

**Observations:** The unearned premiums were correctly calculated and returned to the appropriate party in a timely manner. No exceptions were noted in this review.

**Recommendations:** None

## UNDERWRITING AND RATING

**Comments:** The evaluation of standards in this business area is based on review of Company responses to information requests, questions, interviews, presentations made to the examiner, and file sampling. The underwriting and rating practices portion of the examination is designed to provide a view of how the Company treats the public and whether that treatment is in compliance with applicable statutes, rules and regulations. It is typically determined by testing a random sampling of files and applying various tests to the sampled files. Testing is concerned with compliance issues.

### Standard F 1: Rating Practices

*NAIC Market Regulation Handbook-- Chapter XVI, §F, Standard 1*

The rates charged for the policy coverage are in accordance with filed rates (if applicable) or the company rating plan.

*W. Va. Code §§ 33-20-1 et seq. and 33-20B-3(a) and (c)*

**Comments:** The methodology for this standard is sample and electronic. This standard has a direct statutory requirement and is file-specific. In compliance with W. Va. Code § 33-20-7, insurers must treat all policyholders the same within the same class to ensure no unfairly discriminatory practices occur. Insurers must consistently apply rating factors on all applications and policies to ensure fair, nondiscriminatory charges are made to its insureds rates, and modifiers should not be unfairly discriminatory.

### Results: Fail

Testing for this standard was performed based on sampling of sixty (60) newly-issued policy files and sixty (60) underwriting renewal policy files. The results of testing are as follows:

Table F 1 Underwriting and Rating Sample Results						
Type	Population	Sample	N/A	Pass	Fail	% Pass
New Business	630	60	1	53	6	90%
Renewals	5,908	60	0	21	39	35%

<b>Table F 1 Underwriting and Rating Sample Results</b>						
<b>Type</b>	<b>Population</b>	<b>Sample</b>	<b>N/A</b>	<b>Pass</b>	<b>Fail</b>	<b>% Pass</b>
Total	6,538	120	1	74	45	62%

**Observations:** The following observations were noted on the sampled policy files:

- Testing of the new business policy files indicated the Company utilized the incorrect rate for two (2) insureds added to group policies. The Company did not utilize the approved rate for the group policy effective date but instead used the rate for insureds individual effective date on the group policy. Therefore, the Company did not properly rate these insureds in violation of W. Va. Code § 33-20B-3(c), as a result of this the premium for these insureds were undercharged. The Company agreed with the examiner's findings.

- Testing of the new business policy files indicated that the Company incorrectly failed to apply a 2% electronic medical records credit to one (1) insured when added to a group policy resulting in an overcharge. The Company is not in compliance with W. Va. Code § 33-20B-3(c). The Company agreed to refund the overcharge.

- Review of Company procedures and process for new and renewal business revealed that the Company utilizes an Increased Limit Factor (ILF) to increase the \$1M/\$3M policy limits to \$2M/\$4M. The Company failed to file the Increased Limit Factors with WVOIC in its annual rate filings with the WVOIC and therefore, it appears the Company is not in compliance with W. Va. Code §§ 33-20B-3(a) and 33-20B-3(c). The Company disagreed stating that the WVOIC approved the rate filing, wherein it stated the premium for the ILF would be determined by the reinsurer, since 100% of the premium and exposure is ceded to the reinsurer.

- Testing of the new business policy file revealed that the Company failed to apply a 25% New Practitioner Credit to a policyholder when added to the group policy. This resulted in an overcharge to the policyholder and therefore, the Company is not in compliance with W. Va. Code § 33-20B-3(c). The Company agreed to refund the overcharge.

- Testing of the new business policy files indicated the Company applied debits and credits to three (3) insureds on an additive basis rather than consecutively, as indicated in its filed Rate and Rating Rules Manual(s). The result was an undercharge to the policyholder and therefore, the Company is not in compliance with W. Va. Code § 33-20B-3(c). Upon further follow-up, the Company advised that the inconsistency resulted from implementation of a new operating system in January of 2007. The Company intended for the system to calculate premiums on an additive basis (as it currently does), but the Company failed to submit the revised methodology for review and approval by the WVOIC. The failure to file the process for applying rating factors appears to be a technical oversight rather than a willful or intentional act. According to the Company's calculations, this system change resulted in policies being issued and/or renewed using the incorrect methodology to calculate debits and credits, resulting in both overcharges and undercharges to policyholders. During the course of the examination, the Company revised its Rate and Rating Rules Manual filings and it is now calculating debits and credits in accordance with its rate filings.

- As a result of the same systemic change in the process for apply rates for new policies, testing of the renewal business policy files demonstrated that the Company applied debits and credits to thirty-eight (38) policies on an additive basis, rather than consecutively as indicated in its filed Rate and Rating Rules Manuals. The result was an undercharge to thirty-three (33) policyholders and an overcharge to five (5) policyholders. The Company is not in compliance with W. Va. Code § 33-20B-3(c). The Company disagreed with these findings citing the same explanation as the preceding section.

As a result of the findings related to the calculation errors, the Company was requested to provide restitution to any policyholders who received an overcharge for either a new or renewal policy. The Company has agreed to issue corrective payments and has provided estimates that it will issue payments totaling approximately \$238,000, for 500 policies issued to 322 policyholders.

- Testing of the renewal business policy files indicated the Company failed to apply the 3% C.A.R.E. Program Enrollment credit to one (1) insured in our sample. A review of the other insureds under the same group policy indicated the Company failed to apply the C.A.R.E. Program credit to three (3) other insureds under this group policy. The result was an overcharge for one (1) insured and undercharges for other three (3) insureds. The Company is not in compliance with W. Va. Code § 33-20B-3(c). The Company agreed to refund the overcharges for the 2008 and 2009 for the insured.

- The Company filed and the WVOIC approved an increase from 1% to 2% for the Risk Management Office Consultation Credit, effective January 1, 2008. The Company incorrectly applied a 1% Risk Management Office Consultation Credit to eight (8) policies renewed on or after January 1, 2008. The result was an undercharge for six (6) insureds and an overcharge for two (2) insureds. (Each of these eight (8) sample items contained multiple errors and was included under the previous bullet point as well). The Company is not in compliance with W. Va. Code § 33-20B-3(c). The Company disagreed with these findings stating that the credit was a two-year credit and therefore, was not eligible for the higher credit after only one year. However, the Company did not identify this credit as a two-year credit in the rate filing with the WVOIC.

- Testing of the renewal business policy files indicated the Company added the credits for the C.A.R.E. Program Seminar and the C.A.R.E. Program Enrollment together for a total credit of 5%, rather than applying the credits consecutively, 2% and 3% respectively, resulting in an undercharge for one (1) insured. The Company is not in compliance with W. Va. Code § 33-20B-3(c). The Company agreed with this finding.

**Recommendations:** It is recommended the Company implement procedures to ensure the rates charged are in accordance with filed rates to comply with W. Va. Code § 33-20B-3(c). Furthermore, it is recommended the Company file the Increased Limit Factors with its annual rate filings with the WVOIC to comply with W. Va. Code §§ 33-20B-3(a) and (c). Finally, it is recommended that the Company implement procedure to ensure proper application of credit(s) for their policyholders.

<b>Standard F 2: Rating Practices</b>	<i>NAIC Market Regulation Handbook– Chapter XVI, §F, Standard 2.</i>
<b>All mandated disclosures are documented in accordance with applicable statutes, rules and regulations.</b>	
	<i>W.Va. Code § 33-6-8; 8 and 33-20D-3; W. Va. Code St. R. § 114-30-4, 5 and 6</i>

**Comments:** Review methodology for this standard is generic for medical professional liability business. This standard does not have a direct insurance statutory requirement. It is necessary to provide insureds with appropriate disclosures, both mandated and reasonable. Without appropriate disclosures, insureds find it difficult to make informed decisions.

**Results: Pass**

Testing for this standard was performed based on sampling of sixty (60) new business policy files, sixty (60) renewal business policy files and twenty-five (25) of company initiated and (60) of insured initiated non renewals. The results of testing are as follows:

Type	Population	Sample	N/A	Pass	Fail	% Pass
New Business	630	60	1	59	0	100%
Renewals	5,908	60	0	60	0	100%
Company Initiated Non-Renewals	25	25	0	25	0	100%
Insured Initiated Non-Renewals	194	60	0	60	0	100%
<b>Totals</b>	<b>6,757</b>	<b>205</b>	<b>1</b>	<b>204</b>	<b>0</b>	<b>100%</b>

**Observations:** No exceptions were noted in this review.

**Recommendations:** None

<b>Standard F 3: Rating Practices</b>	<i>NAIC Market Regulation Handbook– Chapter XVI, §F, Standard 3.</i>
<b>The Company entity does not permit illegal rebating, commission cutting or inducements.</b>	
	<i>W. Va. Code § 33-11-4(8)</i>

**Comments:** Review methodology for this standard is generic and sample. This standard has a direct insurance statutory requirement. W. Va. Code § 33-11-4(8) states an insurer shall not knowingly permit or offer to make an inducement rebating premiums payable, or any special favor or advantage in dividends, or anything of value not specified in the contract. Illegal rebating, commission cutting, and other illegal inducements are forms of unfair discrimination.

**Results: Pass**

Testing for this standard was performed based on sampling of sixty (60) new business policy files, and sixty (60) renewal business policy files. The results of testing are as follows:

<b>Table F 3 Underwriting and Rating Sample Results</b>						
Type	Population	Sample	N/A	Pass	Fail	% Pass
New Business	630	60	1	59	0	100%
Renewals	5,908	60	0	60	0	100%
<b>Total</b>	<b>6,538</b>	<b>120</b>	<b>1</b>	<b>119</b>	<b>0</b>	<b>100%</b>

**Observations:** No direct evidence of rebating, commission cutting or inducements was identified during testing of new business and renewal business policies.

**Recommendations:** None

**Standard F 4: Rating Practices** *NAIC Market Regulation Handbook— Chapter XVI, §F, Standard 4.*  
 The Company's underwriting practices are not unfairly discriminatory, collusive or anti-competitive. The Company adheres to applicable insurance laws and Company guidelines in the selection of risks.  
*W. Va. Code §§ 33-11-4(7)(c), 33-20-1 et seq.*

**Comments:** Review methodology for this standard is generic and sample. This standard has a direct insurance statutory requirement. W. Va. Code § 33-11-4(7)(c) states an insurer shall not make or permit any unfair discrimination in favor of particular persons, or between insureds or subjects of insurance having substantially like insuring, risk and exposure factors or expense elements, in the terms or conditions of any insurance contract, or in the rate or amount of premium charge thereon.

**Results:** Pass

Testing for this standard was performed based on sampling of sixty (60) new business policy files and sixty (60) renewal business policy files. The results of testing are as follows:

<b>Table F 4 Underwriting and Rating Sample Results</b>						
Type	Population	Sample	N/A	Pass	Fail	% Pass
New Business	630	60	1	59	0	100%
Renewals	5,908	60	0	60	0	100%
<b>Total</b>	<b>6,538</b>	<b>120</b>	<b>1</b>	<b>119</b>	<b>0</b>	<b>100%</b>

**Observations:** No exceptions were noted.

**Recommendations:** None

**Standard F 5: Rating Practices** *NAIC Market Regulation Handbook— Chapter XVI, §F, Standard 5.*  
 All forms, including contracts, riders, endorsement forms and certificates are filed with the insurance department, if applicable. *W. Va. Code § 33-6-8*

**Comments:** Review methodology for this standard is generic. This standard has no direct insurance statutory requirement.

**Results:** Pass

**Observations:** Testing was completed to determine if the Company’s forms and endorsements had been filed with the WVOIC, and where required, determine that either prior approval had been obtained or that the applicable waiting periods following the filing had been met. The Company provided a listing of the forms utilized including policies, endorsements and applications used during the period under examination and the date of approval by the WVOIC. There were no forms found during testing, which had not received the WVOIC’s approval. Therefore, there were no exceptions noted during testing of this standard.

**Recommendations:** None

**Standard F 6: Rating Practices** *NAIC Market Regulation Handbook— Chapter XVI, §F, Standard 6*  
 Policies, riders and endorsements are issued or renewed accurately, timely and completely. *W. Va. Code § 33-11-7*

**Comments:** Review methodology for this standard is generic and sample. This standard has a direct insurance statutory requirement. Insurers must provide the proper insurance coverage for which the insured requested in the application process and in a timely basis.

**Results:** Pass

Testing for this standard was performed based on sampling of sixty (60) new business policy files and sixty (60) renewal business policy files. The results of testing are as follows:

<b>Table F 6 Underwriting and Rating Sample Results</b>						
<b>Type</b>	<b>Population</b>	<b>Sample</b>	<b>N/A</b>	<b>Pass</b>	<b>Fail</b>	<b>% Pass</b>
New Business	630	60	1	59	0	100%
Renewals	5,908	60	0	60	0	100%
<b>Total</b>	6,538	120	1	119	0	100%

**Observations:** No exceptions were noted in this review.

**Recommendations:** None

**Standard F 7: Rating Practices** *NAIC Market Regulation Handbook– Chapter XVI, §F, Standard 7*  
**Rejections and declinations are not unfairly discriminatory.** *W. Va. Code § 33-11-4(9), & W. Va. Code § 114-15-4.3(b) and W. Va. Code § 33-20F-9(f)(4)*

**Comments:** Review methodology for this standard is generic and sample. This standard has a direct insurance statutory requirement. Insurers must not reject or decline an application for coverage in a manner that is unfairly discriminatory. Additionally, W. Va. Code St. R. § 114-15-4.3(b) states an insurer shall maintain all declined application files. Insurers must maintain copies of all communications associated with an application for insurance.

**Results: Pass with Recommendations**

Testing for this standard was performed based on sampling of forty-eight (48) declined files. The results of testing are as follows:

Type	Population	Sample	N/A	Pass	Fail	% Pass
Declinations	48	48	0	44	4	92%
<b>Total</b>	48	48	0	44	4	92%

**Observations:** Testing of Declination files provided by the Company indicated three (3) files did not contain proper documentation of the reason(s) for declination. (The files did not contain the Company’s Declination worksheet specifying the reason(s) for declining). The Company is not in compliance with W.Va. Code §33-20F-9(f)(4). The Company disagreed with these findings, stating that the reason(s) for declination could be easily ascertained by reviewing the file. However, the Company did acknowledge deviating from its internal guidelines by not including a completed Declination worksheet in the files.

Testing of Declinations files provided by the Company indicated one (1) application was declined because the applicant performed a particular procedure, even though this procedure was not specifically excluded or prohibited by the Company’s underwriting guidelines. Furthermore, the Company was unable to provide justification for denying coverage for this particular procedure.

**Recommendations:** It is recommended that the Company implement procedures to ensure declined application files contain adequate documentation, specifically identifying the reason(s) for declining coverage to comply with W.Va. Code §33-20F-9(f)(4). Furthermore, it is recommended the Company implement procedures to ensure underwriting guidelines are followed in the selection of risks.

**Standard F 8: Rating Practices** *NAIC Market Regulation Handbook– Chapter XVI, §F, Standard 8*  
**Cancellation/non-renewal, discontinuance and declination notices comply with policy provisions and state laws and the company’s guidelines.** *W. Va. Code § 33-20C-2*

**Comments:** Review methodology for this standard is generic and sample. This standard has a direct insurance statutory requirement. W. Va. Code § 33-20C-2 states that cancellation may not be issued unless it is based on at least one of the following reasons:

1. The Insured fails to discharge any of their obligations to pay premiums or any installment thereof within a reasonable time of the due date.
2. The policy was obtained through material misrepresentation.
3. The insured violates any of the material terms and conditions of the policy.
4. The unavailability of reinsurance, upon sufficient proof thereof being supplied to the commissioner.

Any purported cancellation of a malpractice policy attempted in contravention of these standards shall be void.

W. Va. Code § 33-20C-2 states that upon cancellation, nonrenewal or termination of any claims-made malpractice policy, the insurer must offer tail coverage, such offer shall be valid for forty-five (45) days. The tail insurance coverage offer may be accepted sooner, in writing, by the insured.

**Results: Pass**

Testing for this standard was performed based on sampling of forty-eight (48) declinations, sixty (60) cancellations and twenty-five (25) Company-initiated non-renewals. The results of testing are as follows:

Table F 8 Underwriting and Rating Sample Results						
Type	Population	Sample	N/A	Pass	Fail	% Pass
Declinations	48	48	0	48	0	100%
Cancellations	670	60	0	60	0	100%
Company Initiated Non-Renewals	25	25	0	25	0	100%
<b>Total</b>	<b>743</b>	<b>133</b>	<b>0</b>	<b>133</b>	<b>0</b>	<b>100%</b>

**Observations:** No exceptions were noted in the review of the sample of Declinations:

**Recommendations:** None.

<p><b>Standard F 9: Rating Practices</b>                  Rescissions are not made for non-material misrepresentation.</p>	<p><i>NAIC Market Regulation Handbook-- Chapter XVI, §F, Standard 9</i>  <i>W. Va. Code 33-11-7.</i></p>
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**Comments:** Review methodology for this standard is generic and sample. This standard has a direct insurance statutory requirement. The aim is to ensure rescission of coverage occurs only when it is determined that material information was not provided to the insurer for an underwriter to make an adequate assessment of risk when coverage was provided to the insured.

**Results:** Pass

**Observations:** There were no rescissions during the examination period.

**Recommendations:** None

**Standard F 11: Underwriting & Rating Practices** *NAIC Market Regulation Handbook – Chapter XVII, §F Standard 2*  
**Scheduled rating or Individual Premium Risk modification plans, where permitted, are based on objective criteria with usage supported by appropriate documentation.**  
*W. Va. Code §§ 33-11-7; 33-20-1 et seq; § 33-20B-2(e); W. Va. Code St. R. § 114-59-3(3,2) and (3,8)*

**Comments:** Review methodology for this standard is generic, sample, and electronic. This standard has a direct insurance statutory requirement. Property and Casualty Insurers are required to file and seek approval under the provision of W. Va. Code § 33-20-4 to include any scheduled rating or Individual Premium Risk Modification Plan. W. Va. Code § 33-20-3 further states rates cannot be excessive, inadequate, or unfairly discriminatory. Inconsistent handling of rating or underwriting practices, including request for supplemental information, even if not intended, can result in unfair discrimination. Insurers must apply their filed schedules or rate credits and deviations on the basis that is not unfairly discriminatory.

**Results:** Fail

Testing for this standard was performed based on sampling of twelve (12) consent to rate new business policies and ten (10) consent to rate renewal business policies. The results of testing are as follows:

Type	Population	Sample	N/A	Pass	Fail	% Pass
Consent to rate New Business	12	12	0	8	4	67%
Consent to rate Renewal	10	10	0	6	4	60%
<b>Total</b>	22	22	0	14	8	64%

**Observations:** The following observations were noted on the sampled policy files:

Three (3) of the 12 new business consent to rate policy files and two (2) of the 10 renewal files did not contain a completed Medical Professional Agreement (consent to rate) Form. The Company agreed the consent to rate forms were not in the files and were unable to provide them. The Company is not in compliance with W. Va. State R §§ 114-59-3.2 and 3.8.

- Four (4) of the 12 new business consent to rate policies and four (4) of the 10 renewal policies, were not submitted to the West Virginia Offices of the Insurance Commissioner for prior approval as required by W. Va. State R § 114-59.

**Recommendations:** It is recommended the Company implement procedures to ensure consent to rate forms are filed and approved by the WVOIC to comply with W. Va. State R. § 114-59. Furthermore it is recommended the Company implement procedures to ensure signed and completed consent to rate forms are retained by the Company as required by W.Va. Code St. R. § 114-59.

**Standard F 27: Underwriting & Rating Practices** *NAIC Market Regulation Handbook— Chapter XVII, §F, Standard 18*  
**Application or enrollment forms are properly, accurately and fully completed including any required signatures, and file documentation supports the decisions made.** *W. Va. Code §§ 33-11-4(11), and 33-41-1 et seq.*

**Comments:** Review methodology for this standard is generic and sample. This standard has a direct insurance statutory requirement. To avoid unfair discrimination among applicants an insurer must require that necessary information is mandated from all employers to ensure that risks are properly identified and assessed for proper premium charges.

**Results:** Pass

Testing for this standard was performed based on sampling of sixty (60) new business policy files and sixty (60) renewal business policy files. The results of testing are as follows:

Type	Population	Sample	N/A	Pass	Fail	% Pass
New Business	630	60	1	59	0	100%
Renewals	5,908	60	0	60	0	100%
<b>Total</b>	<b>6,538</b>	<b>120</b>	<b>1</b>	<b>119</b>	<b>0</b>	<b>100%</b>

**Observations:** The sampled new business and renewal business files contained complete information for the Company to properly classify the applicant. Applications were signed by the applicant for all sampled policies.

**Recommendations:** None

### CLAIMS PRACTICES

**Comments:** The evaluation of standards in this business area is based on Company responses to information items requested by the examiner, discussions with Company staff, electronic testing of claim databases, and file sampling during the examination process. This portion of the examination is designed to provide a view of how the Company treats claimants and whether that treatment is in compliance with applicable statutes and rules.

The Medical Professional Liability Act (MPLA) supersedes the requirements of the Unfair Trade Practices Act (UTPA) in some instances, but does not exclude it. In order to assess how the Company handles claims, testing was performed by testing all claims standards from the NAIC

Market Regulation Handbook. Testing of claims was performed in the usual manner for market conduct examination of a property and casualty insurer in order to determine the Company’s overall approach to claims handling. The outcome of the examiners’ testing is reported only for those standards which are not pre-empted by the MPLA. Therefore, Standards G1 through G4 which addresses various aspects of the timeliness of claims handling are not included in this report even though testing was performed to ascertain the Company’s general treatment of claimants. For medical liability, claimant treatment is a matter for the courts. This report makes to warranties regarding the Company’s compliance with such requirements.

<b>Standard G 5</b> <b>Claim files are adequately documented.</b>	<i>NAIC Market Regulation Handbook– Chapter XVI, §G, Standard 5</i> <i>W. Va. Code St. R. § 114-15-1.1(b) and 4.4; 114-14-3</i>
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**Comments:** Review methodology for this standard is generic, sample, and electronic. This standard has a direct statutory requirement. W. Va. Code St. R. § 114-15-4.4 states an insurer shall maintain claim files for the calendar year in which the claim is closed plus additional years as set forth in subsection 4.2. Without adequate documentation, the various time frames required by statute and/or regulation cannot be demonstrated. West Virginia requires an insurer to maintain claim files where all notes and work papers pertaining to a claim are retained in sufficient detail that pertinent events and dates of such events can be reconstructed.

**Results: Pass**

A random sample of 60 paid claim and 60 CWOP claim files was selected for detail testing. ACL was utilized to select the samples for review. The results of the testing were as follows:

<b>Table G 5 Claims Sample Results</b>						
<b>Type</b>	<b>Population</b>	<b>Sample</b>	<b>N/A</b>	<b>Pass</b>	<b>Fail</b>	<b>% Pass</b>
Paid Claims	140	60	0	60	0	100%
Claims Closed Without Pay (CWOP)	203	60	0	60	0	100%
<b>Total</b>	<b>343</b>	<b>120</b>	<b>0</b>	<b>120</b>	<b>0</b>	<b>100%</b>

<b>Standard G 6</b> <b>Claims are properly handled in accordance with policy provisions and applicable statutes, rules and regulations.</b>	<i>NAIC Market Regulation Handbook– Chapter XVI, §G, Standard 6</i> <i>W. Va. Code § 33-11-4(9), and W. Va. Code St. R. § 114-14-1, et seq.</i>
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**Comments:** Review methodology for this standard is generic and sample. This standard has a direct statutory requirement. W. Va. Code § 33-11-4(9) states in part, “No person shall commit or perform with such frequency as to indicate a general business practice any of the following: (a) Misrepresenting pertinent facts or insurance policy provisions relating to coverage at issue; (b) Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies; (c) Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies; (d) Refusing to pay claims without conducting a reasonable investigation based upon all available information; (e) Failing to affirm or

deny coverage of claims within a reasonable time after proof of loss statements have been completed; (f) Not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear; (g) Compelling insureds to institute litigation . . .” The aim is to ensure no unfair trade practices are occurring through the verification that claim handling meets West Virginia statutes and rules as applied to claim payments, correct payees, improper release of claims and proper payment of non-disputed claims, proper application of policy provisions and coverage, and proper disclosures are given.

**Results: Pass**

Random samples of sixty (60) paid claim files were selected for detail testing. ACL was utilized to select the samples for review. The results of the testing were as follows:

Table G 6 Claims Sample Results						
Type	Population	Sample	N/A	Pass	Fail	% Pass
Paid Claims	140	60	0	60	0	100%
<b>Total</b>	140	60	0	60	0	100%

**Observations:** Testing determined that claims were properly handled in accordance with policy provisions and applicable statutes, rules and regulations. No exceptions were noted in this review.

**Recommendations: None**

<p><b>Standard G 7</b>                  Company claim forms are appropriate for the type of product.</p>	<p><i>NAIC Market Regulation Handbook-- Chapter XVI, §G, Standard 7.</i>  <i>W. Va. Code § 33-11-4(9)</i></p>
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**Comments:** Review methodology for this standard is generic and sample. This standard does not have a direct statutory requirement.

**Results: Pass**

Random samples of sixty (60) paid claim files and sixty (60) closed without pay (CWOP) files were selected for detail testing. ACL was utilized to select the samples for review. The results of the testing were as follows:

Table G 7 Claims Sample Results						
Type	Population	Sample	N/A	Pass	Fail	% Pass
Paid Claims	140	60	0	60	0	100%
Claims Closed Without Pay (CWOP)	203	60	0	60	0	100%
<b>Total</b>	343	120	0	120	0	100%

**Observations:** Testing determined that Company claim forms were appropriate for the type of product. No exceptions were noted in this review.

**Recommendations:** None

**Standard G 8** *NAIC Market Regulation Handbook— Chapter XVI, §G, Standard 8.*  
**Claim files are reserved in accordance with the Company’s established procedures.**

**Comments:** Review methodology for this standard is generic and sample. This standard does not have a direct statutory requirement.

**Results:** Pass

Random samples of sixty (60) paid claim files and sixty (60) closed without pay (CWOP) files were selected for detail testing. ACL was utilized to select the samples for review. The results of the testing were as follows:

<b>Table G 8 Claims Sample Results</b>						
<b>Type</b>	<b>Population</b>	<b>Sample</b>	<b>N/A</b>	<b>Pass</b>	<b>Fail</b>	<b>% Pass</b>
Paid Claims	140	60	0	60	0	100%
Claims Closed Without Pay (CWOP)	203	60	0	60	0	100%
<b>Total</b>	<b>343</b>	<b>120</b>	<b>0</b>	<b>120</b>	<b>0</b>	<b>100%</b>

**Observations:** Testing determined that claims were reserved for in accordance with the Company’s established procedures. No exceptions were noted in this review.

**Recommendations:** None

**Standard G 9** *NAIC Market Regulation Handbook— Chapter XVI, §G, Standard 9.*  
**Denied and closed without payment claims are handled in accordance with policy provisions and state law.**  
*W. Va. Code § 33-11-4(9) and W. Va. Code St. R. § 114-14-6.3, 6.4, 6.11 and 6.17*

**Comments:** Review methodology for this standard is generic and sample. This standard does not have a direct statutory requirement. W. Va. Code § 33-11-4(9) states in part, “No person shall commit or perform with such frequency as to indicate a general business practice any of the following: (a) Misrepresenting pertinent facts or insurance policy provisions relating to coverage at issue; (b) Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies; (c) Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies; (d) Refusing to pay claims without conducting a reasonable investigation based upon all available information; (e) Failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed; (f) Not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear; (g) Compelling insureds to institute litigation

...” The aim is to ensure no unfair trade practices are occurring through the verification that claim handling meets West Virginia statutes and rules as applied to claim denials, closing of claims with no benefit payments, proper application of policy provisions and coverage, and whether notices of claim denials reference specific policy provisions or exclusions.

**Results: Pass**

Random samples of 60 closed without pay (CWOP) files were selected for detail testing. ACL was utilized to select the samples for review. The results of the testing were as follows:

Table G 9 Claims Sample Results						
Type	Population	Sample	N/A	Pass	Fail	% Pass
Claims Closed Without Pay (CWOP)	203	60	0	60	0	100%
<b>Total</b>	203	60	0	60	0	100%

**Observations:** Testing determined that denied and closed without payment claims were handled in accordance with policy provisions and state law. No exceptions were noted in this review.

**Recommendations:** None

<p><b>Standard G 10</b>                  Canceled benefit checks and drafts reflect appropriate claim handling practices.</p>	<p><i>NAIC Market Regulation Handbook– Chapter XVI, §G, Standard 10.</i>  <i>W. Va. Code § 33-11-4(9) and W. Va. Code St. R. § 114-14-1, et seq.</i></p>
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**Comments:** Review methodology for this standard is generic and sample. This standard does not have a direct statutory requirement. The aim is to verify payments are made to the proper payee and in the proper amount through the review of canceled benefit checks and drafts. It is also the aim to ensure such documents do not result in an improper settlement of benefits owed pursuant to policy provisions.

**Results: Pass**

Random samples of sixty (60) paid claim files and sixty (60) closed without pay (CWOP) files were selected for detail testing. ACL was utilized to select the samples for review. The results of the testing were as follows:

Table G 10 Claims Sample Results						
Type	Population	Sample	N/A	Pass	Fail	% Pass
Paid Claims	140	60	0	60	0	100%
Claims Closed Without Pay (CWOP)	203	60	0	60	0	100%
<b>Total</b>	343	120	0	120	0	100%

**Observations:** Testing determined that canceled benefit checks and drafts reflected appropriate claims handling practices. No exceptions were noted in this review.

**Recommendations:** None

**Standard G 12** *NAIC Market Regulation Handbook— Chapter XVII, § G, Standard 1*  
**Company uses reservation of rights letters or excess of loss letters where appropriate.** *W. Va. Code § 33-11-4(9) and W. Va. Code St. R. § 114-14-6.5*

**Comments:** Review methodology for this standard is generic. This standard has no direct statutory requirement. W. Va. Code § 33-11-4(9) states in part, “No person shall commit or perform with such frequency as to indicate a general business practice any of the following: (a) Misrepresenting pertinent facts or insurance policy provisions relating to coverage at issue; . . .(d) Refusing to pay claims without conducting a reasonable investigation based upon all available information; (e) Failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed; (f) Not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear . . .” The aim is to ensure full disclosure of Company rights are properly made to its policyholders and claimants.

**Results:** Pass

Random samples of sixty (60) paid claim files and sixty (60) closed without pay (CWOP) files were selected for detail testing. ACL was utilized to select the samples for review. The results of the testing were as follows:

<b>Table G 12 Claims Sample Results</b>						
<b>Type</b>	<b>Population</b>	<b>Sample</b>	<b>N/A</b>	<b>Pass</b>	<b>Fail</b>	<b>% Pass</b>
Paid Claims	140	60	0	60	0	100%
Claims Closed Without Pay (CWOP)	203	60	0	60	0	100%
<b>Total</b>	<b>343</b>	<b>120</b>	<b>0</b>	<b>120</b>	<b>0</b>	<b>100%</b>

**Observations:** The Company did not use any reservation of rights letters or excess of loss letters in the sample examined.

**Recommendation:** None

**Standard G 13** *NAIC Market Regulation Handbook— Chapter XVII, § G, Standard 2*  
**Deductible reimbursements to insureds upon subrogation are made in a timely and accurate manner.**

**Comments:** Review methodology for this standard is generic and sample. This standard has no direct statutory requirement. The aim is to ensure full disclosure of Company rights are properly

made to its policyholders with regard to reimbursements due to insured should the Company pursue a subrogation action against a third party.

**Results: Pass**

Random samples of 60 paid claim files and 60 closed without pay (CWOP) files were selected for detail testing. ACL was utilized to select the samples for review. The results of the testing were as follows:

Table G 13 Claims Sample Results						
Type	Population	Sample	N/A	Pass	Fail	% Pass
Paid Claims	140	60	0	60	0	100%
Claims Closed Without Pay (CWOP)	203	60	0	60	0	100%
<b>Total</b>	<b>343</b>	<b>120</b>	<b>0</b>	<b>120</b>	<b>0</b>	<b>100%</b>

**Observations:** Testing determined that there were no deductible reimbursements to insureds upon subrogation due to no policies in the sample having a deductible. No exceptions were noted in this review.

**Recommendations:** None

<p><b>Standard G 14</b>                  Verify the Company is reporting claims activity as required.</p>	<p><i>NAIC Market Regulation Handbook-- Chapter XVII, § G, Standard 3</i>  <i>W. Va. Code § 33-20B(6) and (8)</i></p>
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**Comments:** Review methodology is generic and sample. This standard has direct statutory requirements. W.Va. Code § 33-20B-8 requires an insurer to file the Medical Professional Liability Insurance Claim Report with the Commissioner within 60 days of any judgment, dismissal, or settlement of a civil action or of any claim involving the insured. In addition, W.Va. Code § 33-20B(6) requires insurers that provides 5% or more of the malpractice insurance coverage in the state shall annually submit a report regarding the previous years’ claims activity, civil actions, settlements, etc.

**Results: Pass with Recommendations**

A random sample of claim files was selected for detailed testing. The sample size for each category was determined by whether there were sixty (60) files or less in the population. If less than sixty (60) the entire population was sampled. If greater than sixty (60), ACL was utilized to sample files as indicated in the table below. The samples of paid claims and claims closed without pay were reviewed to determine whether the Company was complying with § 33-20B(6) and (8). The results of testing are as follows:

<b>Table G 14 Claims Sample Results</b>						
<b>Type</b>	<b>Population</b>	<b>Sample</b>	<b>N/A</b>	<b>Pass</b>	<b>Fail</b>	<b>% Pass</b>
Paid Claims	140	60	0	60	0	100%
Claims Closed Without Pay (CWOP)	203	60	0	60	0	100%
<b>Total</b>	<b>343</b>	<b>120</b>	<b>0</b>	<b>120</b>	<b>0</b>	<b>100%</b>

**Observations:** The following observations were noted in this review:

- The Company did not keep a record of when each individual claim report was sent to the WVOIC, but rather it sent the individual claim reports in batches to the OIC using one fax cover sheet for the entire batch, which did not identify the individual claim numbers submitted. However, the Company did maintain system notes indicating when the claim reports were submitted to the WVOIC. The examiner recommends that the Company keep a record of when each individual claim form is sent to the WVOIC.

**Recommendations:** It is recommended the Company implement procedures to ensure documentation is maintained showing that Medical Professional Liability Insurance Claim Reports were submitted to WVOIC within 60 days to ensure compliance with W.Va. Code § 33-20B-8.

### C.A.R.E. PROGRAM

The C.A.R.E. Program is an early intervention risk management program which was started during the fourth quarter of 2006. According to the Company, the objective of this program is to foster open communication between the (insured) physician and the patient, resolve concerns, and assist families through the unanticipated outcome.

The Company worked closely with the WVOIC to develop this program, the Director of the C.A.R.E. Program does not discuss or communicate with other departments, such as claims, underwriting, etc. when an "event" is reported or a payout made, as this program was designed to stand alone. Payments made under this program are not reported to or used by any other department within the Company. The Director reports to the Company's Risk Management Committee but does not provide any detail as to the insureds involved and what transpired with regard to the events reported. Only information regarding the number of events reported and the average payout are reported to the Committee.

The Company's Chief Operating Officer is responsible for oversight the C.A.R.E. program. The Director of the C.A.R.E. program administrator consults with the Chairman of the Company's Board of Directors on technical and medical issues and consults with the CFO regarding financial matters including payments made under the program.

According to the Company's website, the objectives of the C.A.R.E. program are to:

1. Provide communication tools and support for you in situations where care of the patient involved an unanticipated outcome; and
2. Help you respond to patient needs and concerns effectively; and
3. Reduce patient, or family, frustration or anger through removing communication barriers; and
4. Provide support for patients and families as appropriate; and
5. Thereby preserve the physician-patient relationship and create an optimal atmosphere for supporting the patient's clinical and emotional care.

According to the Company, patients are informed that participation in this program does not restrict them from filing a claim. If there is any written demand for payment or attorney involvement, the Company transfers the case to claims immediately and there is no further communication from the C.A.R.E. program. Also, once the patient hires an attorney and/or files a claim, then the insured physician is instructed to discontinue communicating with the patient.

**Observations:** All of the C.A.R.E. program events where the Company made payments during the examination were reviewed to verify the Company was not processing claims through this program. No exceptions were noted in this review.

**Recommendations:** None

**SUMMARY OF RECOMMENDATIONS**

ISSUE	REC #	PAGE
<b>COMPANY OPERATIONS-MANAGEMENT</b>		
<b>Issue A-7:</b> It is recommended the Company maintain all records and documents in compliance with state record retention requirements.	1	11
<b>Issue A-13:</b> As noted above, subsequent to the examination period, the Company has implemented procedures to comply with Standard A-13 involving the use of privacy notices. It is recommended the Company continue to comply with the requirements of W. Va. Code St. R. § 114-57-1, et seq. and W. Va. Code St. R. § 114-62-1, et seq.	2	13
<b>COMPLAINT HANDLING</b>		
<b>Issue B-1:</b> It is recommended the Company implement procedures to ensure complaint information is completely and accurately recorded in its complaint register to ensure compliance with W. Va. Code § 33-11-4(10).	3	16
<b>Issue B-2:</b> It is recommended the Company implement complaint handling policies and procedures, and communicate such to consumers to comply with W. Va. Code § 33-11-4(10) and W. Va. Code St. R. §§ 114-15-4.3(a)(4) and 114-15-4.6.	4	17
<b>Issue B-3:</b> It is recommended the Co. implement procedures to ensure responses to complaints specifically address the issue(s) raised.	5	18
<b>Issue B-4:</b> It is recommended that the Company implement procedures for documentation of its initial response to all complaints including those addressed through review by the Underwriting Committee, and assure that responses are issued within 15 working days.	6	20
<b>MARKETING AND SALES</b>		
<b>Issue C-1:</b> It is recommended that the Company regularly review information contained in its website to ensure that information and reference materials are current.	7	21
<b>PRODUCER LICENSING</b>		
<b>Issue D-1:</b> It is recommended the Company implement procedures to ensure its producer licensing records are current and accurate.	8	23

ISSUE	REC #	PAGE
<b>Issue D-6:</b> It is recommended the Company implement procedures to ensure compliance with W.Va. Code § 33-12-23(b), by obtaining assignment forms from its producers.	9	26
<b>UNDERWRITING AND RATING</b>		
<b>Issue F-1:</b> It is recommended the Company implement procedures to ensure the rates charged are in accordance with filed rates to comply with W. Va. Code § 33-20B-3(c). Furthermore, it is recommended the Company file the Increased Limit Factors with its annual rate filings with the WVOIC to comply with W. Va. Code §§ 33-20B-3(a) and (c). Finally, it is recommended that the Company implement procedure to ensure proper application of credit(s) for their policyholders.	10	31
<b>Issue F-7:</b> It is recommended that the Company implement procedures to ensure declined application files contain adequate documentation, specifically identifying the reason(s) for declining coverage to comply with W.Va. Code §33-20F-9(f)(4). Furthermore, it is recommended the Company implement procedures to ensure underwriting guidelines are followed in the selection of risks.	11	35
<b>Issue F-11:</b> It is recommended the Company implement procedures to ensure consent to rate forms are filed and approved by the WVOIC to comply with W. Va. State R. § 114-59. Furthermore it is recommended the Company implement procedures to ensure signed and completed consent to rate forms are retained by the Company as required by W.Va. Code St. R. § 114-59.	14	38
<b>CLAIMS</b>		
<b>Issue G-14:</b> It is recommended the Company implement procedures to ensure documentation is maintained showing that Medical Professional Liability Insurance Claim Reports were submitted to WVOIC within 60 days to ensure compliance with W.Va. Code § 33-20B-8.	15	45

**EXAMINER'S SIGNATURE AND ACKNOWLEDGMENT**

The examiner would like to acknowledge the cooperation and assistance extended by the Company during the course of the examination.

In addition to the undersigned, James P. Benham, CIE, MCM of RSM McGladrey, Inc. acted as the Examiner in Charge. Brad Beam, MCM, Charles Jewell, MBA, LUTCF, Robert Parsons, MCM of West Virginia Offices of the Insurance Commissioner and Kirk R. Yeager, CIE, CPCU, FMLI, MCM of RSM McGladrey, Inc. also participated in the examination.



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Mark A. Hooker, CIE, CPCU, FLMI, MCM, CWCP, AAI, AU, AIS, LUTCF  
Chief Market Conduct Examiner  
State of West Virginia  
Offices of the Insurance Commissioner

EXAMINER'S AFFIDAVIT

State of West Virginia

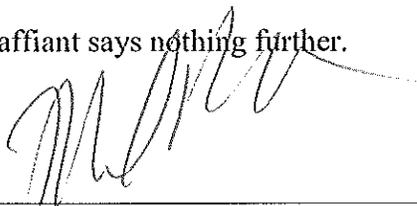
County of Kanawha

EXAMINER'S AFFIDAVIT AS TO STANDARDS AND PROCEDURES  
USED IN AN EXAMINATION

I, Mark. A. Hooker, being duly sworn, state as follows:

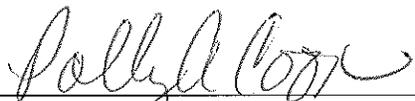
1. I have the authority to represent the West Virginia Office of the Insurance Commissioner in the examination of West Virginia Mutual Insurance Company.
2. I have reviewed the examination work papers and examination report, and the examination of West Virginia Mutual Insurance Company was performed in a manner consistent with the standards and procedures required by the West Virginia Office of Insurance Commissioner. Failure of an examiner to criticize a practice does not constitute condonement of the practice by the examiner.

The affiant says nothing further.

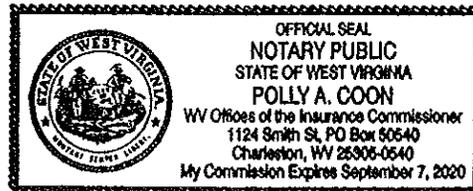


Mark A. Hooker, CIE, CPCU, FLMI, MCM, CWCP, AAI, AU, AIS, LUTCF  
Chief Market Conduct Examiner  
State of West Virginia  
Offices of the Insurance Commissioner

Subscribed and sworn before me on the day 21<sup>st</sup> of April, 2011.

  
\_\_\_\_\_  
Notary Public

My commission expires on: 9-7-2020





R. Austin Wallace, MD  
Chairman

David L. Rader  
President

June 10, 2011

Jane Cline, Insurance Commissioner  
West Virginia Offices of the Insurance Commissioner  
1124 Smith Street  
Charleston, WV 25301

Dear Commissioner:

The Mutual is in receipt of your letter dated June 9, 2011 and the attached Market Conduct Examination Report. Thank you for the opportunity to respond to your final Report.

The Mutual appreciates the professionalism exhibited by the examiners throughout the examination. Compliance is a cornerstone of the Mutual's operations. Our staff continues to work diligently to improve the operations of the company and the recommendations presented in the Report will certainly be used to improve the services we provide to our policyholders. Considering the Mutual has only been in existence since July 1, 2004, and this was our first Market Conduct Exam, we are very proud of the fact that we passed 96% of the standards reviewed by the examiners.

Again, thank for this important review of our operations. The Mutual will only become better as a result.

Sincerely,

A handwritten signature in cursive script, appearing to read "David L. Rader".

David L. Rader  
President and CEO