

BEFORE ALLAN L. MCVEY, INSURANCE COMMISSIONER
OF THE STATE OF WEST VIRGINIA

In the Matter of:

WEST VIRGINIA MUTUAL INSURANCE COMPANY

Administrative Proceeding No. 22-IC-02065

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER ADOPTING
REPORT OF MARKET CONDUCT COMPLIANCE EXAMINATION
AND DIRECTING CORRECTIVE ACTION AND ASSESSING A PENALTY

NOW COMES, Allan L. McVey, Insurance Commissioner of the State of West Virginia (hereinafter, “Commissioner”), who, after consideration of the *Report of Market Conduct Compliance Examination* (hereinafter, the “*Examination Report*”) of West Virginia Mutual Insurance Company (hereinafter, “West Virginia Mutual”) for the examination period ending December 31, 2022, made the following findings of fact and conclusions of law and order.

FINDINGS OF FACT

1. The market conduct examination was a targeted examination focusing on standards contained in the *Market Regulation Handbook*. The examination was conducted in accordance with *W. Va. Code* §33-2-9(c) by examiners duly appointed by the Commissioner. The examination began on June 15, 2023 and concluded on August 1, 2023.

2. On or about August 21, 2023, the examiner filed with the Commissioner, pursuant to *W. Va. Code* §33-2-9, the *Examination Report*.

3. A true copy of the *Examination Report* was provided to West Virginia Mutual and West Virginia Mutual was notified, pursuant to W.Va. Code §33-2-9(j)(2), that it had ten (10) days after receipt of the *Examination Report* to file a submission or rebuttal with the Commissioner. West Virginia Mutual did not provide a submission or rebuttal.

4. As set forth in the *Examination Report*, the examination focused on the methods used by West Virginia Mutual to manage its operations for each of the areas examined, including whether and how West Virginia Mutual complies with West Virginia's statutory and regulatory law.

5. The Commissioner reviewed the *Examination Report* and considered all the relevant information, prior to issuing these findings of fact, conclusions of law and order.

CONCLUSIONS OF LAW

1. The Commissioner has jurisdiction over the subject matter and the parties to this proceeding.

2. This proceeding is conducted pursuant to and in accordance with W. Va. Code §33-2-9.

3. The Commissioner is charged with the responsibility of verifying West Virginia Mutual's continued compliance with West Virginia law.

4. West Virginia Mutual was compliant with twenty-two (22) areas reviewed and predominantly compliant with two (2) areas reviewed. The exam revealed that the company used three (3) applications which were not approved by the Commissioner as required by W.Va. Code §33-6-8(a).

5. As detailed in the *Examination Report*, West Virginia Mutual failed to comply with provisions of West Virginia law.

ORDER

Pursuant to W.Va. Code §33-2-9(j)(3)(A), following the review of the *Examination Report*, the examination work papers, and all relevant information, it is **ORDERED** as follows:

1. The referenced and attached *Examination Report* is hereby **ADOPTED** and **APPROVED** and by this reference, incorporated herein and made a part hereof;

2. West Virginia Mutual shall endeavor to comply with the recommendations contained in the *Examination Report*;

3. West Virginia Mutual shall continue to monitor its compliance with applicable West Virginia law.

4. West Virginia Mutual shall specifically cure the violations and deficiencies identified in the *Examination Report* so as to bring itself into compliance and conformity with West Virginia law, as set forth hereinabove, to the extent such has not already been completed and/or accomplished;

5. West Virginia Mutual shall file a Corrective Action Plan (CAP), subject to the approval of the Commissioner, which said CAP shall detail West Virginia Mutual's changes to its procedures and/or internal policies to ensure compliance with West Virginia law and shall further incorporate all recommendations of the Commissioner's examiners and address all violations specifically cited in the *Examination Report*;

6. The CAP shall be submitted to the Commissioner for his approval within 30 days of the date this order is entered;


7. West Virginia Mutual shall make reasonable changes to the CAP if and as directed by the Commissioner within 30 days of its receipt of the Commissioner's changes to, or disapproval of, the CAP;

8. West Virginia Mutual shall, within 90 days of its receipt of notice from the Commissioner of his final approval thereof, implement the CAP; and

9. West Virginia Mutual shall pay an administrative penalty in the amount of Two Thousand Dollars (\$2,000.00) for its non-compliance with West Virginia law as set forth hereinabove, the assessment of said penalty is in lieu of any other regulatory penalty and shall be remitted within 30 calendar days of the date this order is entered.

10. Inasmuch as orders entered by the Commissioner are subject to judicial review in the Intermediate Court of Appeals as set forth in W.Va. Code §51-11-4(b)(4), any person aggrieved by this Order may, within 30 days after the entry of the judgment being appealed, file an appeal as set forth in W.Va. Code §33-2-14 and W.Va. R.A.P., Rule 5(b).

Entered this 3rd day of October, 2023.


Allan L. McVey
CPCU, ARM, AAI, AAM, AIS
Insurance Commissioner

Report of Market Conduct Compliance Examination

As of December 31, 2022



WEST VIRGINIA MUTUAL INSURANCE COMPANY

500 Virginia Street East, Suite 1200
Charleston, WV 25301

NAIC COMPANY CODE: 11972

Examination Number: 22-IC-02065

Date Prepared:
August 9, 2023

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August 21, 2023

The Honorable Allan L. McVey
West Virginia Insurance Commissioner
900 Pennsylvania Avenue
Charleston, West Virginia 25302

Dear Commissioner McVey:

Pursuant to your instructions and in accordance with W.Va. Code §33-2-9, an examination has been made as of December 31, 2022 of the business affairs of

West Virginia Mutual Insurance Company
500 Virginia St. 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.

COMPLIANCE WITH PREVIOUS EXAMINATION RECOMMENDATIONS

The West Virginia Office of the Insurance Commissioner (WVOIC) previously conducted a comprehensive market conduct examination of the Company as of December 18, 2018.

The December 18, 2018 examination findings included:

- Standard A7: Failure to provide on every application a clearly legible means by which an examiner can identify a producer involved in the transaction in accordance with W. Va. Code R. §114-15-4.
- Standard D2: Eight (8) producers' appointments were submitted to WVOIC beyond 15 days from the effective date of the written policy according as per W.V. Code §33-12-18.
- Standard D3: Notification of termination was not mailed to two (2) producers as per W.Va. Code §33-12-25.
- Standard E1: Twenty-three (23) policies did not consistently have renewal notifications mailed at least 90 days in advance of the expiration of the policy as required by WVMIC's Underwriting, Rating Rules and Operations Manual.

Previous recommendations for Standards A7, D3, and F1 have been addressed and no subsequent failures were found. However, for Standard D2 there were two (2) producers' appointments which were submitted to WVOIC beyond 15 days from the effective date of the written as per W.V. Code §33-12-18.

EXECUTIVE SUMMARY AND SCOPE OF EXAMINATION

A targeted market conduct examination was performed on the Company, with actual review work related to West Virginia Mutual Insurance Company commencing on June 15, 2023, and concluding on August 1, 2023. Twenty-four (24) standards were tested during the examination; the Company was found to be compliant with twenty-two (22) standards; predominately compliant with two (2) standards and non-compliant with zero (0) standards.

The areas of concern identified in this examination are as follows:

- Standard D2: Failure to not accept any business from or pay any commission to any individual insurance producer who does not hold an appointment as an individual insurance producer for the Company per W.V. Code §33-12-18.
- Standard F5: Failure to use forms, including policies, contracts, riders, amendments, endorsement forms and certificates which are filed with the insurance department, if applicable, as required by W.V. Code §33-6-8(a).

The Company is directed to take immediate corrective action to demonstrate its ability and intention to conduct business according to the West Virginia insurance laws and regulations. When applicable, corrective actions for other jurisdictions should also be addressed.

All unacceptable or non-compliant practices may not have been discovered or noted in this examination report. Failure to identify or criticize improper or non-compliant business practices in West Virginia or in other jurisdictions does not constitute acceptance of such practices. Examination report findings that do not reference specific insurance laws, regulations, or bulletins are presented to improve the Company's practices and ensure consumer protection.

The basic business areas that were examined under this examination were:

- Company Operations & Management
- Complaint Handling
- Producer Licensing
- Policyholder Service
- Underwriting and Rating
- Claims

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

This examination report is a report by exception, rather than a report by test, and additional practices, procedures, and files subject to review during the examination were omitted from the report if no improprieties are indicated.

HISTORY AND PROFILE

The Company was created pursuant to West Virginia House Bill 601 in 2001 and House Bill 2122 in 2003, respectively, to provide medical liability insurance to physicians in West Virginia.

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; hence, the transaction was accounted as a novation under SSAP No. 62.

The Company reported \$19.2 million in direct written premium between January 1, 2022 and December 31, 2022, with a market share of 28.156%. It should be noted that 100% of the direct written premium was related to the physicians' professional liability line of business.

The Company writes only medical professional liability policies with primary limits of \$1 million per claim and \$3 million in aggregate. The main policy issued is on a claims-made basis, but the

policy does have an endorsement for DDR (death, disability, and retirement) events, which is on an occurrence basis.

METHODOLOGY

The examination was conducted in accordance with the standards and procedures established by the National Association of Insurance Commissioners (“NAIC”) and West Virginia’s applicable statutes and regulations. The examiners conducted file reviews and were familiar with the processes in as much as prior examinations had been performed.

The examiners used the NAIC standards of 7% error ratio on claims test (93% compliance rate) and 10% error ratio on all other tests (90% compliance rate) to determine whether or not an apparent pattern or practice of being compliant, predominately compliant, or non-compliant existed for any given test. Except as otherwise noted, all tests were conducted via a random sample taken from a given population.

EXCEPTIONS

D. PRODUCER LICENSING

The evaluation of standards in this business area is based on a review of WVOIC records and Company responses to information requests, and questions. This portion of the examination is designed to test the Company’s compliance with West Virginia producer licensing laws and rules.

Standard D2: The producers are properly licensed and appointed (if required by state law) in the jurisdiction where the application was taken. (NAIC Market Regulation Handbook – Chapter 20, Standard D2)

Test Methodology:

- Are the producers properly licensed for business solicited in West Virginia? [W.V. Code §33-12-3(a)]
- Does the Company appoint the producer within fifteen (15) days of the date the producer submits their first application to the Company? [W.V. Code §33-12-18]

Results: Predominantly Compliant

Observations: During the examiner’s review of thirty-one (31) new business applications written during the exam period, two (2) producers were not properly appointed. These producers were appointed during the exam review, beyond 15 days from the effective date of the written policy.

Recommendation: The Company should ensure producers are properly appointed within (15) calendar days from the date that the agency contract is executed and/or the first insurance application is submitted as required by W.V. Code §33-12-18.

F. UNDERWRITING AND RATING

The evaluation of standards in this business area is based on a review of Company records and responses to information requests, and questions from the examiner. This portion of the examination is designed to test the Company's compliance with West Virginia underwriting laws and rules.

Standard F5: All forms, including policies, contracts, riders, amendments, endorsements and certificates are filed with the insurance department, if applicable. (NAIC Market Regulation Handbook – Chapter 20, Standard F5)

Test Methodology:

- Did the company use approved forms and endorsements?
- Examine new business applications for the required fraud warning statement.

Results: Predominantly Compliant

Observations: The examiner's review of new business indicated three (3) applications were not approved for use by the WVOIC as required by W Va. Code §33-6-8(a).

Recommendation: The Company should use applications which have been approved by the WVOIC as required by W.V. Code §33-6-8(a).

OBSERVATIONS

D2 – Two (2) producers' appointments were submitted to WVOIC beyond 15 days from the effective date of the written policy. The Company shall have procedures in place to ensure applications received are by producers properly appointed as required by W.V. Code §33-12-18.

F5 – Three (3) applications were not approved for use by the WVOIC as required by W.V. Code §33-6-8(a).

RECOMMENDATIONS

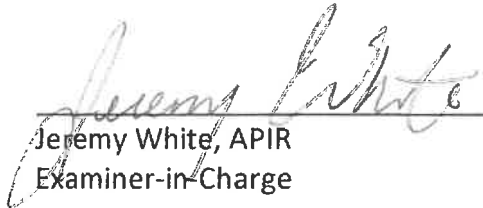
D2 – The Company should ensure producers are properly appointed within (15) calendar days from the date that the agency contract is executed, or the first insurance application is submitted as required by W.V. Code §33-12-18.

F5 – The Company should only use policy forms that have been approved for use in West Virginia as per W. V. Code §33-6-8(a).

EXAMINER'S SIGNATURE AND ACKNOWLEDGEMENT

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

In addition to the undersigned, Desiree D. Mauller, CIE, CWCP, MCM, also participated in the examination.



Jeremy White, APIR
Examiner-in-Charge

EXAMINER'S AFFIDAVIT

State of West Virginia
County of Kanawha

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

I, Jeremy White, APIR, being duly sworn, states as follows:

1. I have the authority to represent West Virginia 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 West Virginia.

The affiant says nothing further.



Jeremy White, APIR

Subscribed and sworn before me by Jeremy White on this 21st day of August 2023.



Notary Public

My commission expires: 10-11-2024

