

BEFORE JAMES A. DODRILL, INSURANCE COMMISSIONER  
OF THE STATE OF WEST VIRGINIA

*In the Matter of:*

**WEST VIRGINIA MUTUAL INSURANCE COMPANY**

Administrative Proceeding No. 20-MC-STAT-02001

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

NOW COMES, James A. Dodrill, 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, 2018, made the following findings of fact and conclusions of law and order.

**FINDINGS OF FACT**

1. The market conduct examination was a comprehensive 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 and covered the period of January 1, 2015 through December 31, 2018.
2. On or about May 15, 2020, 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.
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 exam discovered four (4) areas where West Virginia Mutual was non-compliant with West Virginia law.

6. The Commissioner reviewed the *Examination Report* and considered West Virginia Mutual's submissions 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-three (23) of twenty-seven (27) standards tested.

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

- Standard A7 – West Virginia Mutual did not ensure that every application contained a clearly legible means by which an examiner can identify a producer involved in the transaction in accordance with *W. Va. Code R* §114-15-4.3.a.
- Standard D2 – West Virginia Mutual did not appoint eight (8) producers within the time required by *W. Va. Code* §33-12-18.
- Standard D3 – West Virginia Mutual did not mail a copy of the notification of termination to the producer on two occasions in violation of *W. Va. Code* § 33-12-25.
- Standard E1 – West Virginia Mutual failed to deliver renewal notifications to policyholders in time periods set in the Company's Underwriting, Rating, Rules and Operation Manual.

6. The Commissioner has determined that West Virginia Mutual should be assessed a penalty for violating the aforementioned standards.

ORDER

Pursuant to *W.Va. Code* §33-2-9(j)(3)(A), following the review of the *Examination Report*, the examination work papers, and West Virginia Mutual's response thereto, 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*;

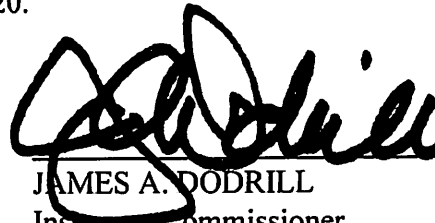
6. The CAP shall be submitted to the Commissioner for his approval within 30 days of the date this order is entered;

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 One Thousand Dollars (\$1,000.00) for its non-compliance with West Virginia law as set forth hereinabove, the assessment of which penalty is in lieu of any other regulatory penalty and shall be remitted within 30 calendar days of the date this order is entered.

ENTERED this 6<sup>th</sup> day of November, 2020.

A handwritten signature in black ink, appearing to read "J. Dodrill", is written over a horizontal line.

JAMES A. DODRILL  
Insurance Commissioner  
State of West Virginia

# Report of Market Conduct Compliance Examination

As of December 31, 2018



## WEST VIRGINIA MUTUAL INSURANCE COMPANY

500 Virginia Street East, Suite 1200  
Charleston, WV 25301

NAIC COMPANY CODE: 11972

Examination Number: 20-MC-STAT-02001

Date Prepared:  
May 15, 2020

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May 15, 2020

The Honorable James A. Dodrill  
West Virginia Insurance Commissioner  
900 Pennsylvania Avenue  
Charleston, West Virginia 25305

Dear Commissioner Dodrill:

Pursuant to your instructions and in accordance with West Virginia Code §§ 33-2-9, a Market Conduct examination has been made for the period of January 1, 2015 to December 31, 2018 on 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.

## **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 31, 2014, pursuant to the statutory obligation of the Commissioner’s Office to examine each West Virginia domestic insurance company every five (5) years. Business areas reviewed and tested included Company Operations & Management, Complaint Handling, Marketing and Sales, Producer Licensing, Policyholder Services, Underwriting and Rating, Claims, and the C.A.R.E. Program.

All of the previous recommendations had not been addressed by the Company and subsequent failures were found.

The following are areas of subsequent failures:

- 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 §114-15-4.3.
- 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. Va. Code §33-12-3(d).
- Standard D3 – Failure to simultaneously mail a copy of the termination notification to the producer as required by W. Va. Code §33-12-25.

## **EXECUTIVE SUMMARY AND SCOPE OF EXAMINATION**

This market conduct examination is part of a Combined Examination being performed in conjunction with our Financial Conditions Division. A separate report for the findings of the market conduct review has been issued accordingly. The market conduct examination work related to West Virginia Mutual Insurance Company commenced January 21, 2020 and concluded May 12, 2020. Twenty-seven (27) standards were tested during the examination; the Company was found to be compliant with twenty-three (23); predominately compliant with zero (0) and non-compliant with four (4).

The following are areas of concern:

- 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 §114-15-4.3.
- 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. Va. Code §33-12-3(d).
- Standard D3 – Failure to simultaneously mail a copy of the termination notification to the producer as required by W. Va. Code §33-12-25.



- Standard E1 – Failure to deliver renewal notifications to policyholders in time periods set in Company’s policies.

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 be addressed.

All unacceptable or non-compliant practices may not have been discovered or noted in this 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
- Marketing & Sales
- 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 Bills 601 and 2122 of 2001 and 2003, respectively, to provide physicians’ and surgeons’ medical professional 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 physicians’ and surgeons’ medical 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.

The Company earned \$21.0 million of gross premiums between January 1, 2018 and December 31, 2018, with a market share of 26.93%. 100% of the earned premium related to the physicians' and surgeons' medical professional liability insurance line of business.

The Company writes only physicians' and surgeons' medical professional liability insurance 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. In, 2009 the Company became licensed in Ohio, Kentucky, and Virginia.

## **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. 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.

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.

## **ELEMENTS OF THE REVIEW**

### **A. COMPANY OPERATIONS/MANAGEMENT**

The evaluation of standards in this business area was limited to the review of the previous examination recommendations. No further procedures were performed.

**Standard A7: Records are adequate, accessible, consistent and orderly and comply with state record retention.** (NAIC Market Regulation Handbook – Chapter XX, § A, Standard 7)

#### **Test Methodology:**

- Are the records adequate, accessible, and compliant with state record retention requirements? [W. Va. Code R. §114-15-4]

**Results:** Non-compliant

**Observations:** The Company's records were sufficient to allow the examiners to reconstruct the files, with an exception. W. Va. Code R. §114-15-4.3 states "The application shall bear a clearly legible means by which an examiner can identify a producer involved in the transaction. The examiners shall be provided with information clearly identifying the producer involved in the transaction."

The application includes a designated area to list the agency and producer. The applications for forty (40) policies were reviewed. Seven (7) policies did not list any information in the designated area. The examiners were able to determine the producer by reviewing the correspondence within the files. Two (2) policies were determined to be direct policyholders and did not use an agency.

**Recommendation:** Every application for the Company should have the designated "Agent Information" completed in order to allow examiners to identify the producer involved in the transaction. As a best practice, it is also recommended to indicate in the designated area those policies that are written directly by the Company.

## **B. 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 XX, § D, Standard 2)

### **Test Methodology:**

- Are the producers properly licensed for business solicited in West Virginia? [W. Va. 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. Va. Code §33-12-18]

**Results:** Non-compliant

**Observations:** The records obtained from the Company indicated thirty-four (34) producers were appointed during the exam period. Forty-eight (48) producers were identified as submitting

applications to the Company for the policies written during 2018. Thirteen (13) producers were found to be included within each category to bring a total sample population to sixty-nine (69) producers. Eight (8) producers' appointments were submitted beyond 15 days from the effective date of the written policy.

**Recommendation:** It is recommended that the Company appoint producers within fifteen (15) days of accepting an application for new business or renewal policies.

**Standard D3: Termination of producers complies with statutes regarding notification to the producer and notification to the state, in applicable.** (NAIC Market Regulation Handbook – Chapter XX, § D, Standard 3)

**Test Methodology:**

- Does the Company notify the Commissioner’s Office (on a form prescribed by the WVOIC) within thirty (30) days of terminating the producer’s authority? [W. Va. Code §33-12-25(b)]
- Is the producer notified simultaneously? [W. Va. Code §33-12-25(d)]
- Does the Company notify the Commissioner’s Office if the termination is for cause? [W. Va. Code §33-12-25]

**Results:** Non-compliant

<b>Table D 3 - Producer Licensing Sample Results</b>					
<b>Type</b>	<b>Population</b>	<b>Sample</b>	<b>Pass</b>	<b>Fail</b>	<b>% Pass</b>
Producer Terminations	2	2	0	2	0
<b>Total</b>	2	2	0	2	0

**Observations:** The two (2) producer terminations were the result of the termination of the Agency Agreement by which the producers were employed. The producers were not terminated for cause and did not require notification of such to the WVOIC. The Company notified the WVOIC for the termination of the producers but did not simultaneously mail a copy to the producer. The Company noted that each producer was notified through verbal communications.

**Recommendation:** It is recommended that the Company simultaneously mail a copy of the termination to the producers in accordance with W. Va. Code §33-12-25(d).

**C. POLICYHOLDER SERVICES**

The evaluation of standards in this business area is based on a review of Company responses to information requests, questions, 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.

**Standard E1: Premium notices and billing notices are sent out with an adequate amount of advanced notice.** (NAIC Market Regulation Handbook – Chapter XX, § E, Standard 1)

**Test Methodology:**

- Were the notices issued timely? [No statutory requirement]

For this standard, testing was also performed for new business. No issues noted for new business policies. As such, only renewals have been included in the table below.

**Results:** Non-compliant

<b>Table E 1 – Policyholder Service Renewal 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>
Renewals (90-day period)	496	25	0	2	23	9%
<b>Totals</b>	<b>496</b>	<b>25</b>	<b>0</b>	<b>2</b>	<b>23</b>	<b>9%</b>

**Observations:** The Company provided renewal notifications to agents, and policyholders if direct, in shorter time periods than dictated by the Underwriting, Rating Rules and Operations Manual (“Manual”), and in inconsistent durations. The Manual states that notifications are to be sent out 120 days in advance of such month. The Company had stated that the underwriting review process begins 120 days in advance and notices are to be mailed 90 days in advance of the renewal date. For the renewal notifications sent for 2016, 2017, and 2018, no notice was sent in a 120-day time period. The notifications were reviewed to assess if the notices were sent within the 90-day timeframe. For the 25 sampled policies, 2 policies had the notifications sent in advance of 90 days for all years. Of the 72 instances (3 policies cancelled before renewal notification for 2018), 12 notifications were sent with 90+ days advance notice. The 2018 renewal notifications. The notification timeframe ranged from 61 to 101 days prior to the expiration of the policy.

**Recommendation:** It is recommended that the Company deliver renewal notification in the specified timeframes set in its Underwriting, Rating Rules and Operations Manual.

## **OBSERVATIONS**

**A7** – Seven (7) policies did not list the agent’s information on the application as required by W. Va. Code R. §114-15-4. Two (2) policies were determined to be direct policyholders and did not use an agency.

**D2** – Eight (8) 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 per W Va. Code §33-12-18.

**D3** – Notification of termination was not mailed to two (2) producers as required by W Va. Code §33-12-25.

**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.

## **RECOMMENDATIONS**

**A7** – Every application for the Company should have the designated “Agent Information” completed in order to allow examiners to identify the producer involved in the transaction. As a best practice, it is also recommended to indicate in the designated area those policies that are written directly by the Company.

**D2** – The Company shall appoint producers within fifteen (15) days of accepting an application for new business or renewal policies.

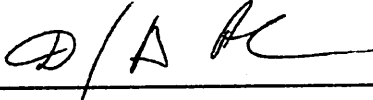
**D3** – The Company shall appoint producers within fifteen (15) days of accepting an application for new business or renewal policies.

**E1** – The Company shall deliver renewal notification in the specified timeframes set in its Underwriting, Rating Rules and Operations Manual.

### 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, Jessica Lynch, AFE, also participated in the examination.

A handwritten signature in black ink, appearing to read 'D/A' followed by a stylized flourish.

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David Palmer, CFE, MCM  
Examiner-in-Charge



**EXAMINER'S AFFIDAVIT**

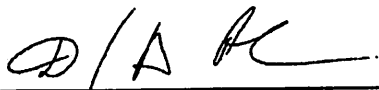
State of Texas  
County of Collin

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

I, David Palmer, CFE, MCM, being duly sworn, states as follows:

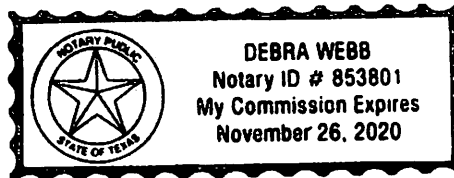
1. I have the authority to represent West Virginia in the examination of West Virginia Mutual Insurance Company.
2. I have reviewed the examination work papers and examination report, and the examination of West Virginia Mutual Insurance Company was performed in a manner consistent with the standards and procedures required by West Virginia.

The affiant says nothing further.



David Palmer, CFE, MCM

Subscribed and sworn before me by David Palmer on this 27th day of May, 2020.

  
Notary Public

My commission expires: 11-26-2020