



State of New Jersey

DEPARTMENT OF BANKING AND INSURANCE
LEGISLATION AND REGULATION
PO Box 325
TRENTON, NJ 08625-0325

CHRIS CHRISTIE
Governor

THOMAS B. CONSIDINE
Commissioner

KIM GUADAGNO
Lt. Governor

TEL (609) 984-3602
FAX (609) 292-0896

MARY C. BEAUMONT
Director

BULLETIN NO. 11-01

TO: ALL AUTHORIZED OR ADMITTED PROPERTY AND CASUALTY INSURERS AND LIFE AND HEALTH INSURERS, ALL HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE CORPORATIONS, HEALTH SERVICE CORPORATIONS, HEALTH MAINTENANCE ORGANIZATIONS, AND ALL LICENSED LIFE AND HEALTH AND PROPERTY AND CASUALTY INSURANCE PRODUCERS

FROM: THOMAS B. CONSIDINE, COMMISSIONER

RE: N.J.S.A. 17:29B-4: UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS OR PRACTICES AND N.J.S.A. 17B: 30-4 AND 30-7 – FALSE ADVERTISING AND DEFAMATION

On December 7, 2009, the Department of Banking and Insurance (“Department”) issued Bulletin No. 09-39 reminding property and casualty insurers and producers that N.J.S.A. 17:29B-4 (3) prohibits property and casualty insurers and producers from making, publishing, disseminating or circulating, directly or indirectly, or aiding, abetting or encouraging the making, publishing, disseminating or circulating of any oral or written statement or any pamphlet, circular, article or literature which is false, or maliciously critical or derogatory to the financial condition of an insurer, and which is calculated to injure any person engaged in the business of insurance.

The Department notes that N.J.S.A. 17:29B-4 (2) prohibits property and casualty insurers and producers from making, disseminating, circulating or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio station, or in any other way, an advertisement, announcement or statement containing any assertion, representation or statement with respect to the business of insurance or with respect to any person in the conduct of his insurance business, which is untrue, deceptive or misleading. (emphasis added.)

N.J.S.A. 17B:30-4 prohibits life and health insurers and producers from making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly to be made, published, disseminated, circulated, or placed before the public, in a

newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing any assertion, representation or statement with respect to the business of insurance and annuities or with respect to any person in the conduct of his insurance and annuity business which is untrue, deceptive or misleading. N.J.S.A. 17B:30-7 prohibits life and health insurers and producers from making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting or encouraging the making, publishing, disseminating or circulating of any oral or written statement or any pamphlet, circular, article or literature which is false or maliciously critical of or derogatory to the financial condition of an insurer and which is calculated to injure any person engaged in the business of insurance or annuity. Health insurers and producers are also subject to N.J.A.C. 11:2-11.10, which provides that advertisements shall not directly or indirectly make unfair or incomplete comparisons of policies or benefits or otherwise falsely disparage competitors, their policies, services or business methods, and to N.J.A.C. 11:2-11.17, which prohibits advertisements from containing statements which are untrue in fact or by implication misleading with respect to the insurer's assets, corporate structure, financial standing, age or relative position in the insurance business. Similarly, life insurers and producers are subject to N.J.A.C. 11:2-23.6 (o), which proscribes the same content in their advertisements that is prohibited by N.J.A.C. 11:2-11.10. Pursuant to N.J.A.C. 11:17A-3.1, to the extent that they regulate the conduct of producers, property and casualty producers are also subject to these rules concerning life and health insurance advertising.

The Department has recently received a number of complaints regarding advertisements and is issuing this Bulletin to provide guidance to life and health insurers and producers, and further guidance to property and casualty insurers and producers, as to content and/or omissions that the Department considers to be prohibited by the statutes and rules cited above. The Department intends to propose regulations to codify the guidance set forth herein.

The Department believes that the above-referenced authorities require that in advertisements that make express or implied claims that are likely to be misleading in the absence of certain qualifying information, such qualifying information shall also be disclosed in the advertisement, and done so in a clear and conspicuous manner. For example, an advertisement that identifies an insurer's competitors and states that those competitors are not rated by certain rating agencies, or are not rated, will be considered to be actionable if the advertisement does not also disclose whether or not the advertising insurer has such a rating or is not rated. Similarly, the Department construes these laws and rules to require that if an advertisement includes financial information of competitors, such as surplus, assets or premium, the same information must be presented for the advertising insurer.

Property and Casualty insurers and producers whose advertisements are found to be in violation of N.J.S.A. 17:29B-4 will be subject to penalties as provided in N.J.S.A. 17:29B-7 and 29B-11. Life and health insurers and producers whose advertisements are found to be in

violation of N.J.S.A. 17B:30-4 or 17B:30-7 or the rules referenced above will be subject to penalties as provided in N.J.S.A. 17B:30-17 and 30-20.

Insurers are encouraged to disseminate this Bulletin to all producers with whom they have agency contracts.

February 4, 2011
Date



Thomas B. Considine
Commissioner

INOORD\bulletin - Advertising 1-28-11.doc