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WAYNE METCALF
INSURANCE COMMISSIONER

August 1, 2002

Memorandum 2002 – 6L

MEMORANDUM

TO: All Licensed Producers

FR: Wayne Metcalf
Insurance Commissioner

RE: Questions and Answers Regarding Producer Licensing

With the implementation of the Producer Licensing Law effective July 1, 2002, producers and other licensees have contacted the Insurance Division with questions about the new law. Therefore, to address these questions and to provide guidelines relating to producer licensing, the Insurance Division has again consolidated some of the more frequently asked questions into a "Q&A" format for the benefit of all producers.

For more information about the new license requirements, producers are also urged to review Memorandum 2002-3L dated April 19, 2002.

QUESTIONS AND ANSWERS ABOUT PRODUCER LICENSING

Resident and Nonresident Producer License

When will I receive my new producer license?

New producer licenses will replace approximately 8,500 previously issued licenses relating to the general agent, subagent, and solicitor classifications.

The Insurance Division is in the process of preparing and mailing renewal notices to all licensed producers. The notices will be mailed in increments. The first incremental mailing is scheduled for August 1, 2002. Each notice will include information regarding the renewal fee (minus any applicable credit), new license number, new renewal date, and when applicable, the required CE credit renewal due date.

Renewals for all **individual resident producer** licenses will be placed on the new "birth month" renewal system. The same "birth month" renewal system will also apply to **individual nonresident producer** license renewals.

The license renewal date for a **resident producer business entity** (agency, corporation, partnership, etc.) will be July 16. The license renewal for a **nonresident producer business entity** will be April 16.

Barring any unforeseen delays, the Insurance Division will mail the renewal notices to all licensed producers in accordance with the following schedule:

License Type	Birth Month	Mail Date	Due Date (60 calendar days)
Res. Producer	Feb, Apr, Jun	8/01/02	9/30/02
Res. Producer	Aug, Oct, Dec	8/15/02	10/14/02
Res. Producer	Jan, Mar, May	8/29//02	10/27/02
Res. Producer	Jul, Sep, Nov	9/19/02	11/11/02
Res. Business Entity Producer	July 16th	9/26/02	11/25/02
NR Producer	Jan to Dec	9/26/02	11/25/02
NR Business Entity Producer	April 16th	9/26/02	11/25/02

Once payment of the renewal fee is received, the Insurance Division will issue the new Producer License to the licensee.

Pending the issuance of my new producer license, can I continue to sell insurance under my old GA, SA, and SO license?

Yes.

Must I wait until my new producer license is issued before I receive an insurer or producer appointment?

No. Pending the issuance of your new producer license, the Insurance Division will accept an insurer or producer appointment made after July 1, 2002.

Will the requirements for the designated representative of a general agency change after July 1, 2002?

Yes. After July 1, 2002 the business entity can only designate a licensed producer as its designated representative. Section 431:9A-106(b)(2) reads in part:

> "(b) A business entity acting as an insurance producer is required to obtain an insurance producer license. Application shall be made using the uniform business entity application. Before approving the application, the commissioner shall find that:
>
> (2) The business entity has designated a licensed producer who is a natural person responsible for the business entity's compliance with the insurance laws and rules of this State;"

Prior to July 1, 2002, I was a solicitor licensed to sell life insurance. I was also the designated representative for a general agency that sold property and casualty insurance. Since I will receive a producer license, will the new license allow me to continue as the DR for the business entity?

Because you were only authorized to sell life insurance under the solicitor license, you will have the same line of authority under the new producer license. To continue as the DR you will need to amend your producer license to include the same P&C lines as the business entity.

I am authorized to sell life insurance, which under my old solicitor license allowed me to sell different forms of life insurance, including variable life and variable annuity contracts of insurance. Effective July 1, 2002, I understand there is now a separate line of authority for producers who sell variable life and variable annuity insurance. Since I plan to sell variable life and variable

annuity insurance, what must I do to have this line authority included on my producer license?

A producer who sells variable life and variable annuity contracts of insurance is required to register with the National Association of Securities Dealers, Inc. (NASD).

The Insurance Division will soon mail the license renewal notice to all producers. Those who intend to sell variable life and variable annuity contracts of insurance are required to submit the completed NASD securities registration document, together with the renewal fee payment to the Insurance Division. Once the fee payment, the completed NASD registration document, and other applicable renewal requirements are met, the Insurance Division will amend the license to include variable life and variable annuity, and issue the new license to the producer.

The same requirements will apply to a new applicant for a producer license if the line of authority is to include variable life and variable annuity contracts of insurance.

A sample of the NASD securities registration document is attached to this memorandum. This document can be obtained from www.nasdr.com or the producer's **securities broker/dealer**.

Appointments

Under the producer licensing law, when does an insurance producer become authorized to appoint another producer to act as a producer for the insurer?

Section 431:9A-114(a), HRS, reads:

> "An insurance producer shall not act as an agent of an insurer unless the insurance producer becomes an appointed agent of that insurer or is contracted and appointed by with an insurance producer so appointed." (Emphasis added)

Only the producer who is "so appointed" by the insurer may appoint another producer to act as an agent for that insurer. Accordingly, a producer who does not have a direct appointment with the insurer may not appoint other producers to represent the insurer.

For example, Insurance Company X appoints Producer Y to sell life insurance for the company. Producer Y then appoints another producer, Producer Z, to sell life insurance on behalf of Company X. In this example, Producer Z may not, in turn, appoint other producers because Producer Z does not have a direct appointment with Company X.

Will there be new procedures after July 1, 2002 to notify an insurer whether

or not a producer who is currently appointed has successfully completed the license renewal?

The notification procedure in effect prior to July 1, 2002, will remain the same. If the producer complies with the renewal requirements, the license will be renewed automatically. The appointment which producers had prior to July 1, 2002 will remain in effect with no further notice to the insurer. However, if the producer fails to comply with the renewal requirements, the license will be placed on "inactive" status. When the license becomes "inactive" the Insurance Division will notify the insurer relative to the appointment.

As a former general agent, subagent, and solicitor, do I need to notify the various insurers about the appointments I held prior to July 1, 2002 once I receive my new producer license and producer license number?

For the same reasons cited in the previous question, it is not necessary for a former general agent, subagent, and solicitor to notify insurers about previous appointments held before to July 1, 2002.

If I am licensed in four (4) States, do I pay only one fee?

No. You will be responsible for the payment of all applicable fees charged by each state in which you currently hold a nonresident producer license.

Please explain the appointment process and requirements.

Under the producer licensing law, an insurance producer shall not represent or act as an agent for an insurer without an appointment. Specifically, section 431:9A-114 (a) and (b) reads as follows:

> "(a) An insurance producer shall not act as an agent of an insurer unless the insurance producer becomes an appointed agent of that insurer or is contracted with and appointed by an insurance producer so appointed.
>
> (b) To appoint a producer as its agent, the appointing insurer or producer shall file, in a format approved by the commissioner, a notice of appointment within fifteen days from the date the agency or business entity contract is executed or the first insurance application is submitted to the insurer or producer. If the appointment form is not received by the commissioner within the fifteen-day period, the appointment shall become effective on the date on which the commissioner receives the appointment form. A producer shall disclose to a client if the conditions of subsection (a) have not been met. An insurer or producer may also elect to appoint a producer to all or same insurers within the insurer's or producer's holding company system or group by filing with the commissioner a single appointment notice."

An insurer may appoint any number of producers. A producer who is appointed by an insurer may appoint other producers. However, a producer who does not have a direct appointment from an insurer may not appoint other producers.

After July 1, 2002, will there be new appointment forms?

Yes. The new appointment forms are **I/P/7/2002** for Insurer-to-Producer appointments and **P/P/7/2002** for Producer-to-Producer appointments. The new forms are available at the Insurance Division. Also, the appointment forms will soon be available for downloading from the Division's website at www.state.hi.us/dcca/ins.

How many insurers may an insurance producer represent?

A producer may represent more than one insurer, either by direct appointment or by being appointed by another producer.

Can an applicant qualify for a producer license if the applicant does not have an appointment in place at the time of application?

Yes. Effective July 1, 2002, the Insurance Division will no longer require an appointment as a condition of licensure. However, a licensed producer may not represent or act as an agent for an insurer without an appointment. Again, producers are advised to review section 431:9A-114, Hawaii Revised Statutes.

What if a producer never gets an insurer's appointment after policies are sold?

A producer who continues to sell, solicit, or negotiate insurance without an appointment will be in violation of section 431:9A-114. The applicable penalties may include license suspension or revocation, or civil fine.

Can the appointment fees for other States be available on line?

At present, there are no websites that give a state-by-state listing of appointment fees.

What if we secure an appointment with an insurer that is not licensed in the State of Hawaii? In the case of an insolvency, how will this affect the Hawaii Guaranty Insurance Association?

Unless the business was transacted as surplus lines business, Article 8 of the Hawaii Insurance Code will not allow unlicensed insurers to do business in this State. Also, the Insurance Division will not accept appointments from unlicensed insurers.

In the case of insolvency, insurance claims filed with an unlicensed insurer are not defined as "covered claims" for purposes of the Hawaii Guaranty Insurance Association.

Must a producer have a direct appointment with the insurer before the insurer can pay the producer a commission?

No. In lieu of a direct appointment, a producer may receive commissions from another producer under a Producer-to-Producer appointment.

Limited Lines Producer License

Did the producer licensing law adopt the old classifications for limited lines license, such as those which existed prior to July 1, 2002?

Yes. Article 431:9A, HRS, lists the following classifications:

(1) A limited license to travel agents whose authority is limited to travel ticket insurance policies of disability, baggage, or personal effects;
(2) A limited license to individuals in charge of vending machines that offer travel insurance;
(3) A limited license to an individual who sells disability insurance as a promotional device to improve newspaper circulation;
(4) A limited license to creditors that offer credit life and credit disability insurance to debtors under group or individual policies; and
(5) A limited credit insurance license to any individual who sells group or individual policies of credit life, credit accident & health, credit involuntary unemployment, or credit property insurance, provided the individual satisfactorily passes a limited license examination.

When will the examination for limited lines producer license be available?

The examination is currently under review and will be available as soon as the review is completed.

Commissions and Referral Fees

Commissions and other related fees were discussed in Memorandum 2002-3L dated April 19, 2002. Licensees were advised that the applicable statute was section 431:9A-113, HRS, which reads:

"(a) An insurance company or insurance producer shall not pay a commission, service fee, brokerage fee, or other valuable consideration to a person for selling, soliciting, or negotiating insurance in this State if that person is required to be licensed under this article and is not so licensed.

(b) A person shall not accept a commission, service fee, brokerage fee, or other valuable consideration for selling, soliciting, or negotiating insurance in this State if that person is required to be licensed under this article and is not so licensed.

Consideration for selling, soliciting, or negotiating insurance in this State if that person is required to be licensed under this article and is not so licensed.

(c) Renewal or other deferred commissions may be paid to a person for selling, soliciting, or negotiating insurance in this State if that person was required to be licensed under this article at the time of the sale, solicitation, or negotiation and was so licensed.

(d) An insurer or insurance producer may pay or assign commissions, service fees, brokerage fees, or other valuable consideration to an insurance agency or to persons who do not sell, solicit, or negotiate in this State, unless the payment would violate section 431:13-103."

Referral Fees

Subsequent to the issuance of Memorandum 2002-3L, producers have contacted the Insurance Division with additional questions regarding "referral fees". The following are of some of the questions asked by producers.

What are the common conditions for referral fees?
Do referral fees pertain to variable life and annuity contracts?
Can you give a referral fee to a mortgage broker, loan officer, or real estate broker who refers clients to an insurance producer?
Can a producer advertise referral fees?

Whether the producer is allowed to pay a referral fee in all, some, or none of the above cases will depend on the facts and circumstances relevant to each case. However, producers are urged to consider the following as general guidelines when contemplating the payment of referral fees.

Pursuant to section 431:9A-113(a), HRS, no producer shall pay a commission, service fee, brokerage fee, or other valuable consideration to an unlicensed person who sells, solicits, or negotiates insurance in this State. Accordingly, a producer who paid a referral fee to a person who engaged in unlicensed insurance business in this State would, by making such a payment, be in violation of this section. The applicable penalties may include license suspension or revocation, or a civil fine.

The terms **Sell**, **Solicit**, and **Negotiate** are defined in the producer licensing law as follows:

> " 'Sell' means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurance company."
>
> " 'Solicit' means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance form a particular company."
>
> " 'Negotiate' means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or conditions of the contract, provided that the person engaged in the act either sells insurance or obtains insurance from insurers or producers."

In the past, the Insurance Division has provided guidelines as to the type of activities or conduct that may be interpreted as "selling" or "soliciting". In Memorandum 1998-15A the following guidelines were offered which, when viewed in conjunction with the producer licensing law, are still applicable:

(1) Selling or attempting to sell insurance, or attempting to sell additional coverage or other insurance;
(2) Assisting a prospective or present insured in filling out insurance application;
(3) Explaining, describing, or recommending insurance, coverage, terms or benefits;
(4) Quoting rates or premiums; or
(5) Binding coverage, issuing or delivering policies.

In view of section 431:9A-113(a), HRS, producers should reasonably ascertain, prior to paying the referral fee, whether the person who made the referral had engaged in the sale, solicitation, or negotiation of insurance so as to require a license. Payment in the latter situation is prohibited.

Miscellaneous

Where can I get information about Continuing Education requirements?

Many of the recent questions regarding CE are still applicable to an earlier Q&A published by the Insurance Division. Therefore, producers are urged to review the CE Q&A through the Division's website at www.state.hi.us/dcca/ins.

I assume the license examination will be changed to accommodate the new Producer Licensing Law. If so, when will the new examination be given?

The written examination will include new questions about producer licensing. Candidates applying for a producer license on or after July 1, 2002 will be given the new exam. There will also be a new limited examination for those applying for a Personal Lines License.

a) **For property and casualty lines, how does the Producer Licensing Law protect the independent producer from other producers (former general agent) who want to re-write the agency contract so that the "book of business" brought in by the independent producer will now belong to the appointing producer (former general agent)?**

b) **Under the old law, an independent solicitor's "book of business" belonged to the independent producer and not the agency that appointed the producer to sell property and casualty insurance. How does the new Producer Licensing Law protect the independent producer?**

Because the two questions are similar, they were combined to generate the following answer:

The licensee's "book of business" has always been a contractual matter, and not one governed by statute. For this same reason, the producer licensing law does not change or affect the standard agency or producer agreement between independent contractors. Producers should be aware that under the new licensing law, individual producers are now allowed to seek direct appointments with the insurer.

Please direct additional questions or inquiries regarding the producer licensing law to:

State of Hawaii
Insurance Division
P.O. Box 3614
Honolulu, HI 96811
Telephone: (808) 586-2788

File for:
CRD# [redacted]
CYNTHIA [redacted]

Data Current as of: 07/23/2002

Registrations

This section provides the jurisdictions with which the broker is currently registered or licensed to do business, the category of each registration, and the date on which the registration approval was granted.

Employer: [redacted]

Jurisdiction/SRO	Category	Status	Status As Of Date
HI	Agent	Approved	06/11/2002
NASD	Invest. Co and Variable Contracts	Approved	06/04/2002

Series 6

Sample - NASD securities registration document.
Data Current as of: 07/23/2002

File for:
CRD# [redacted]
MICHAEL [redacted]

Registrations

This section provides the jurisdictions with which the broker is currently registered or licensed to do business, the category of each registration, and the date on which the registration approval was granted.

Employer: [redacted]
LLC

Jurisdiction/SRO	Category	Status	Status As Of Date
HI	Agent	Approved	10/14/1997
NASD	General Securities Representative	Approved	01/01/1997

Series 7