



**ASSURANT**  
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May 24, 2012

Towanda David  
Bureau Chief - Field Claims Bureau  
California Department of Insurance  
300 South Spring Street, 11th Floor  
Los Angeles, CA 90013

**Re: Market Conduct Examination of Time Insurance Company - NAIC # 69477  
CDI #1705-3: Company Response to Field Claims Examination Report and  
Table of Specific Findings**

Dear Ms. David:

Time Insurance Company (“Time” or the “Company”) appreciates the opportunity to respond to the report issued by the California Department of Insurance ("CDI" or the "Department"). The Company takes seriously its responsibility to work with physicians, hospitals, and the Department, to serve our insureds effectively and efficiently. The Company is fully committed to resolving the few issues raised by the Department to ensure compliance with the California Insurance Code and related regulations.

The Company notes that the alleged violations identified in the report were neither knowingly committed nor part of a general business practice. Therefore, Time disputes each alleged violation of CIC Section 790.03 and California Code of Regulations section 2695 et seq. as set forth in the report. In addition, Time respectfully submits the following specific responses to the report:

Assurant Health is the brand name for products underwritten and issued by Time Insurance Company, Union Security Insurance Company and John Alden Life Insurance Company.

**Finding No. 1:** The Department finds that the Company's failure in 15 instances to notify providers that claims were being contested or denied under Section 10123.13(a) and to provide notice to providers that they may seek review, amounted to unfair practices under Section 790.03(h)(3). The Department acknowledged that the Company independently discovered these relatively isolated occurrences and corrected them.

None of these 15 instances amounted to unfair practices under Section 790.03, as there is no indication that the activities were "knowingly commit[ed] or perform[ed] with such frequency as to indicate a general business practice." Section 790.03(h). The Company further points out that, in the context of an insured's rescission, any provider review would have been largely irrelevant, given the fact that rescission voided the insured's coverage agreement. The claims reviewed were not contested on grounds of medical necessity, or other denial reasons subject to provider dispute resolution remedies. Moreover, given that rescission voids the coverage agreement from its inception, the Company believes that subsection (h)(3) is not applicable here.

**Finding No. 3:** This finding states that the Company "engaged in the practice of 'postclaims underwriting'" in eleven instances. Specifically, in three instances, the Company is alleged to have accepted applications in which one applicant answered health questions on behalf of another person to be covered. In eight instances, the Company is alleged to have conducted verbal health history interviews that deviated from the written text of the application. None of these instances amounted to statutory postclaims underwriting as defined in Section 10384. We discuss each of these items in turn.

A. Answering for another

In order for an underwriting failure to constitute postclaims underwriting under Section 10384, the rescission must have been “due to” a failure to have completed underwriting or follow up on questions raised by disclosures in the application. The *Nieto v. Blue Shield of Cal. Life & Health Ins. Co.*, 181 Cal. App. 4th 60 (2010) decision made clear that there must be both a failure of underwriting *as well as* a causal link between that underwriting failure and the rescission.<sup>1</sup> For example, if one could show that proper underwriting would have caused the insurer to have discovered the fact that later led to rescission, this would be an example of a causal link between the underwriting failure and the rescission.

At the outset, there is no case or statute holding that it is deficient underwriting for an applicant to answer questions regarding his or her spouse, particularly where the spouse signs a verification of the information. But even if one assumes that it was improper to allow a person to answer questions about his or her spouse in the application process, any such conduct would only constitute postclaims underwriting under Section 10384 and applicable caselaw *if it impacted the facts leading to the rescission*. In each of the three cases cited in the report, this was not the case. This is because in each of the

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<sup>1</sup> The *Nieto* court quoted the trial court’s statement that ““even if one were to assume that [the insurer] had some obligation to contact the providers listed in the Application, [appellant] did not even list the providers who had treated her for the conditions that led to the rescission. Thus, the rescission was not “due to” (*i.e.*, the result of) any claimed underwriting deficiency.” *Nieto*, 181 Cal. App. 4th at 83; *see also id.* at 85-86 (noting that had the insurer requested medical records from the doctor listed on the application, those records would not have disclosed the specific condition on which the rescission was based, and thus the rescission was not ““due to’ [the insurer’s] failure to complete the medical underwriting process”).

three cases cited in the report, the misrepresented medical history that formed the basis for the rescission *pertained to the person who completed the application*. Therefore, it could not have amounted to postclaims underwriting under section 10384.

In one case, the applicant answered the Company representative's questions on the health history call and it was her medical condition that was misrepresented and resulted in rescission. In the second case, there was no such call. Rather, the applicants applied electronically through the Company's online verification system. The female applicant completed the enrollment form with her agent. She later signed the application verification form, and it was her medical history that was misrepresented and formed the basis for the rescission. This scenario also occurred in the third and final case.

Section 10384 does not penalize a company unless an alleged underwriting deficiency impacted the rescission. In each of the three cases here, the Company took medical history from individuals who misrepresented *their own history*. The fact that they might have also answered questions about another did not lead to, or play any part in, the subsequent rescissions.

B. Verbal deviations from the application

The Company also did not engage in postclaims underwriting in the eight situations noted where supposedly incomplete questions were asked. It is our understanding that, in these instances, the Department contends that the underwriting personnel deviated from the written health history questionnaire.

In response to this finding we carefully reviewed each of these eight cases. In each case, any deviations were not material to the issues that later formed the basis for

rescission. ***Indeed, in each case, the interviewer did in fact ask the questions that were pertinent to the non-disclosed issues that formed the basis for the rescission, and in each case, the questions were falsely answered.*** For example:

Case 1: The Company representative specifically asked the applicant (a) when her last physician visit occurred and what the results were, (b) whether she had taken any prescription medication in the last year, (c) whether she had sought any medical treatment at all in the last year, (d) whether she had any stomach or digestive problems in the last 10 years, and (e) whether she had any health condition not disclosed in the application or not previously discussed. The applicant claimed that her last physician visit was several months before the date of application, that all results were normal, and that she only had a prescription for birth control pills. She denied having any stomach or digestive disorders. Subsequent investigation established that the applicant suffered from digestive tract conditions (GERD and IBS) for which she was then taking prescription medications, and she had received treatment related to these conditions less than one month prior to applying for coverage. These were the facts that led to the rescission.

Case 2: The Company representative specifically asked the applicant (a) when he last saw his primary physician, (b) whether he took any prescription medication in the last 12 months, (c) whether he had received any medical treatment in the last 12 months, (d) whether he had received any type of diagnostic testing in the last 10 years, (e) whether he had received any counseling or treatment concerning alcohol in the last 10 years, (f) whether he had any history of stomach or digestive disorders, (g) whether he had any history of urinary system disorders, (h) whether he had any other physical impairment not previously disclosed, and (i) whether he fully disclosed his medical condition during the interview. The applicant falsely represented during his conversation

with the Company representative that his last physician visit was for a routine physical in April 2005 with normal results. On the contrary, the applicant was seen on May 14, 2005 and self-reported a history of alcoholic hepatitis to his physician – demonstrating his knowledge of the condition. At that May 14, 2005 visit, he was diagnosed with alcoholic hepatitis and abnormal liver functions which he never disclosed during the application process. He did not disclose any of these facts during the underwriting interview. These were the facts that led to the rescission.

Case 3: The Company representative specifically asked the applicant when she was last seen by a doctor and the details of that consultation and whether she (a) had received any medical treatment in the last 12 months, (b) had taken any prescription medication in the last 12 months, (c) had any skin problems, (d) had any other physical impairment not previously disclosed, or (e) wanted to disclose any other medical history. The applicant failed to disclose her skin conditions and medications related to these conditions. These were the facts that led to the rescission.

Case 4: The Company representative specifically asked when the applicants were last seen by a doctor, details concerning their last complete physical, including current weight, and whether they had (a) received any medical treatment in the last 12 months, (b) taken any prescription medication in the last 12 months, (c) were recommended to have diagnostic testing in the future, (d) any type of diagnostic testing of any kind in the last 10 years, (e) any heart or circulatory problems, (f) any blood disorders, (g) any nervous or mental disorders, (h) any stomach or digestive problems, (i) any bone, muscle or connective tissue problems, (j) any tumors, cysts or growths, (k) and skin disorders, (l) any physical impairment not previously disclosed, or (m) wanted to disclose any other medical history. They failed to disclose that one of the applicants suffered from a broad

range of medical conditions, including: moderate ischemia; recurrent episodes of dizziness, giddiness and tiredness; chest pain and discomfort; hyperlipidemia; diverticulosis; esophageal reflux; sleep apnea; actinic keratosis; hemorrhoids; and arthritis of the knee, including discussions with his physician about surgical options which included total knee replacement. One of the applicants also under-reported his weight by 50 pounds. These were the facts that led to the rescission.

Case 5: The Company representative specifically asked whether either of the applicants (a) had undergone surgery in the last 10 years, (b) was recommended to have diagnostic testing in the future, (c) had any type of diagnostic testing of any kind in the last 10 years, (d) had received any treatment or diagnosis concerning cancer, (e) had received any treatment or diagnosis concerning a tumor or cyst, (f) had received any treatment or diagnosis concerning skin disorders, and (g) had any health condition not disclosed in the application. One applicant failed to disclose her recent history of a cyst (determined to be melanoma), two excisions to remove melanoma, total body scan, and recommendation for an additional scan, in response to any of these questions. These were the facts that led to the rescission.

Case 6: The Company representative asked the applicant (a) when he was last seen by a doctor, (b) details concerning his last complete physical, (c) whether he had received any medical treatment in the last 12 months, (d) taken any prescription medication in the last 12 months, (e) whether he was recommended to have diagnostic testing in the future, (f) whether he had any type of diagnostic testing of any kind in the last 10 years, (g) whether he had any urinary system disorders or any reproductive system disorders, (h) whether he had any physical impairment not previously disclosed, (i) whether he fully disclosed all medical conditions during the interview, and (j) whether he

wanted to disclose any other medical history. In response, the applicant falsely failed to disclose his recent, significant history of neurogenic bladder, interstitial cystitis, prostatitis, or urethritis in response to any of these questions. These were the facts that led to the rescission.

Case 7: The Company representative asked the applicant (a) when she was last seen by a doctor, (b) details concerning her last complete physical, (c) whether she was recommended to have diagnostic testing in the future, (d) her current height and weight, (e) whether she had heart problems, (f) whether she had any physical impairment not previously disclosed, and (g) whether she wanted to disclose any other medical history. The applicant did not disclose her chest pain (for which she had seen a physician just four months prior to applying for coverage) or that she had been recommended to undergo a stress test in response to any of these questions. She also under-reported her weight by 45 pounds. These were the facts that led to the rescission.

Case 8: The Company representative asked the applicant's wife her current weight. The applicant's wife responded that she was 5' 4" and weighed 175 pounds. However, she in fact weighed 271 pounds. The applicant's wife would have been denied coverage had she reported her true weight. These were the facts that led to the rescission.

The Company also notes that these recorded interviews were far more extensive than the application, and allowed the interviewers to follow up in detail on any disclosures provided in response to the questions. Further, in each case, the applicants were sent a physical copy of the completed application to review and, if necessary, correct, after the recorded interview had been completed. This far exceeds the standard found permissible in the *Nieto* case, where the insurer did not send the completed

application to the insured, but was still found to have properly endorsed the application.

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In closing, we believe the actions taken to date are consistent with our mission to provide our customers and partners in the State of California with consistent, high quality service. We hope this communication fully addresses the issues raised in your report, and we stand ready to respond rapidly to any further inquiries.

Sincerely,

A handwritten signature in black ink, appearing to read "Julia M. Hix". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

Julia M. Hix  
Vice President, Regulatory Compliance  
Assurant Health Compliance Officer