

**Edward F. Davis, Ph.D.**  
*Director, Internal Audit  
Assurance Services*

June 21, 2007

Mr. Craig Dixon  
Field Claims Bureau  
California Department of Insurance  
300 S. Spring Street, 11th Floor  
Los Angeles, California 90013

Re: Targeted Field Claims Examination Reports for BC Life & Health Insurance Company (the "Company"), NAIC # 62825

Dear Mr. Dixon:

BC Life & Health Insurance Company ("Company") requests that the following response to the above-referenced adopted examination report ("Report") be posted with the public Report.

The Company's business practice is to rescind coverage only where rescission is proper and warranted. Nevertheless, following the period covered by the Report, the Company has further enhanced some of its procedures to insure that coverage is rescinded only where appropriate and to streamline the timeliness of its determination on rescission matters and communication with insureds.

Most people are truthful when applying for insurance; however, a small number of individuals will misrepresent their health status by concealing the true facts about their health history in an effort to obtain coverage for which they are not eligible. Rescission is the appropriate and legal means to remedy and control abuse by this small minority. The remedy of rescission enables insurers to avoid imposing the financial burden created by applicants who are not truthful on the majority of insureds who participate truthfully in the application process.

At the same time, the Company recognizes that rescission is a strong remedy with serious consequences for an insured whose health coverage is rescinded, and this remedy should be exercised carefully and accurately. In fact, the Company uses the rescission remedy very sparingly. During the period covered by the Report, less than one half of one percent of new applications accepted resulted in a rescission. The Company continues to augment and strengthen its policies, procedures, and personnel training to meet this goal.

In each instance where the Company rescinded coverage, the rescission was based on the applicant's failure to disclose material facts that, if known to the Company, would have caused the Company to decline to offer coverage. Certain of the citations in the Report suggest that the Company did not prove that the applicant's failure to disclose material facts was intentional, and as a result, did not follow certain contract terms. Under California law, however, the "intent" necessary for rescission of an insurance contract is shown when the applicant is aware of the true facts but provides false or incomplete information in the application.

The fact that certain applicants had knowledge of his or her health history, which was contrary to answers provided on the application, was demonstrated in the files reviewed by the Department. In addition, as a practical matter, knowledge of falsity can be inferred from many different circumstances, including, for instance, medical records showing that the applicant recently consulted a physician about the condition at issue or received specific treatment for the condition; reference to the condition by the applicant when describing the applicant's medical history in contexts other than an application for insurance; or a frequent recurrence of the condition that is near in time to the application for coverage. Under these types of circumstances, it can be inferred that the insured was aware of the condition. In each instance where a policy was rescinded, the Company determined that the true facts were known to the applicant. Accordingly, the level of intent apparent from the Company's underwriting files is consistent with both California law and with the Company's policy and application language permitting rescission when the insured intentionally provides incomplete or false material information.

The fact that the Company has made appropriate decisions to rescind a member's policy is demonstrated by the following examples. These examples of important information withheld from the application, are taken from the group of rescissions that were examined by the Department:

- Medical records received by the Company during the claim review process showed a disorder that was diagnosed before the application was signed, and treatment for the disorder beginning a mere 7 days before the application was signed.
- An applicant failed to disclose treatment for a condition that was diagnosed shortly before obtaining coverage, with treatment continuing to the day before the applicant signed the application, with instructions for further testing and treatment.
- An applicant had undergone treatment for multiple conditions, including hospitalization, in the four years preceding the submission of the application for insurance. The applicant failed to disclose either the treatment or hospitalization.
- Medical records disclosed that an applicant had a long-standing condition for which he had surgery a few years earlier and had continued to receive treatment, including prescription drugs and recommendations for follow up treatment, less than six months before the application was submitted. This information was not provided in the

application, even though the application has questions about the treatment, and a specific question about prescription medication.

None of the applicants referred to in these examples would have been eligible for the policy they received if they had disclosed their true health history. In these situations, and many others just like them, the health history that the applicants concealed was significant and known to the applicants. This small percentage of new applicants, who conceal significant health conditions when applying for insurance, are the ones for whom the remedy of rescission is intended.

We very much appreciate the courtesy and cooperation that you and others at the CDI extended to the Company throughout the examination process. Thank you for your consideration and your willingness to work with the Company to resolve the various concerns identified by the CDI during the examination. If you have any questions or if you require any additional information, please contact me directly. This response is being provided both in hard copy and electronically by e-mail as required by California Code of Regulations, title 10, section 2695.30.

Sincerely,

Edward Davis