

1 CALIFORNIA DEPARTMENT OF INSURANCE
LEGAL DIVISION

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6
7 BEFORE THE INSURANCE COMMISSIONER
8 OF THE STATE OF CALIFORNIA
9

10 In the Matter of the Licenses and Licensing
11 Rights of

12 CONSECO SENIOR HEALTH
13 INSURANCE COMPANY,

14 Respondent.

File No: UPA 05048841

FIRST AMENDED ORDER TO SHOW
CAUSE, NOTICE OF HEARING, and
NOTICE OF MONETARY PENALTY
(Ins. Code §§790.03, 790.035, 790.05, 10234.2,
10234.3, 10234.4 and 10234.5)

FIRST AMENDED STATEMENT OF
CHARGES/ACCUSATION INCLUDING
SUSPENSION OR REVOCATION OF
CERTIFICATE OF AUTHORITY
(Ins. Code §§395, 700, 704, 717, 790.03,
10123.13, 10234.4, 10234.8, 10235.9,
10235.40, 10237.5)

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21 The Insurance Commissioner of the State of California, acting in his official capacity
22 (Commissioner), brings this matter pursuant to the provisions of California Insurance Code
23 §§700, 704, 790.035, 790.05, 10234.2, 10234.3, 10234.4 and 10235.5. As set forth herein, the
24 Commissioner alleges violations of Insurance Code §§395, 700, 717, 790.03, 10123.13, 10234.8,
25 10235.9, 10235.40, and 10237.5, and California Code of Regulations, Title 10, Chapter 5,
26 Subchapter 7.5, Article 1, Sections 2695.3 through 2695.11 (Fair Claims Settlement Practices
27 Regulations.)

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1 **I**

2 **PARTIES**

3 Respondent Conseco Senior Health Insurance Company ("Conseco") holds, and at all
4 times relevant hereto held, a Certificate of Authority issued by the Commissioner to issue life and
5 disability insurance policies, including disability policies providing long term care coverage (LTC
6 Policies.) The Commissioner is informed and believes that Conseco is in the process of changing
7 its name to Senior Health Insurance of Pennsylvania. The Commissioner is further informed and
8 believes that the ownership of Conseco has changed since the commencement of this action, but
9 the change of ownership does not affect the matters set forth herein or the relief sought by the
10 Commissioner.

11 **II**

12 **BACKGROUND**

13 A. Policyholder Complaints to the Department of Insurance. Between January 1, 2004
14 and March 31, 2007, the California Department of Insurance (CDI) received complaints
15 (Complaints) from persons (or on behalf of persons) who were policyholders of LTC Policies,
16 home health policies, cancer policies and other policies issued by Conseco (each, a Policy.) Each
17 of the complaints pertained to Conseco's handling of claims under a Policy and each complaint
18 contended that Conseco failed to act reasonably in reviewing the policyholder's submission of
19 claims, in adjusting claims, in reasonably and fairly communicating with the policyholder
20 regarding claims, in paying claims in a fair and timely manner, and in otherwise failing to deal
21 with the policyholder in a manner consistent with California laws and regulations, and in
22 complying with Conseco's obligations of good faith and fair dealing. The claimants are identified
23 in Attachment A hereto (names are abbreviated to maintain privacy.) In response to the
24 Complaints, the CDI investigated each Complaint by, among other things, contacting Conseco
25 and requesting that Conseco review the Complaint, respond to specific issues raised by the
26 policyholder or the CDI, and in certain cases, provide a copies of documents or notations from
27 Conseco's claim files or provide the entire claim file to the CDI (hereafter, collectively, the
28 "Complaint Investigation.") As a result of the Complaint Investigation, the CDI determined that

1 Consecoco repeatedly violated sections of the Insurance Code and the Fair Claims Settlement
2 Practices Regulations pertaining to the handling, adjusting and payment of claims and the
3 handling of policyholder and CDI inquiries. The CDI notified Consecoco in writing of its findings
4 as to each policyholder Complaint and each CDI inquiry pursuant to Insurance Code §12921.1
5 and Fair Claims Settlement Practices Regulation §2694.(a)(1). (Hereafter, a section of the Fair
6 Claims Settlement Practices Regulations is referred to as "Reg § __ .") The CDI's findings as the
7 result of the Complaint Investigation are set forth in Section III hereof. The findings indicate that
8 Consecoco engaged in a pattern and practice of violating the provisions of Insurance Code §§790.03
9 and 10123.13, the Fair Claims Settlement Practices Regulations, and its duties of good faith and
10 fair dealing.

11 B. Market Conduct Examination. Pursuant to Insurance Code §§730, 733, and 790.04
12 and Reg §2695.3(a), the CDI conducted an on-site market examination of Consecoco's operating
13 procedures and claims handling practices for LTC Policies (Market Conduct Exam.) The
14 examination was conducted at Consecoco's offices in Carmel, Indiana and it covered claims
15 handling matters occurring between July 1, 2005 and March 31, 2007. The Market Conduct
16 Exam was made to discover, in general, whether Consecoco's claims handling practices and
17 operating procedures conform to the contractual obligations in its insurance policy forms, the
18 Insurance Code, the Fair Claims Settlement Practices Regulations, federal law, and case law.
19 The examination reviewed 82 policy files and 22 complaint files. The Market Conduct Exam
20 included a review of the following matters:

21 (1) guidelines, procedures, training plans and forms adopted by Consecoco for use in
22 California, including documentation maintained by Consecoco in support of positions or
23 interpretations of fair claims settlement practices;

24 (2) the application of such guidelines, procedures, and forms, by means of examination of
25 a sample of individual policy files, complaint files, general operations, and other related records;
26 and

27 (3) consumer complaints and inquiries handled by the CDI during the same time period,
28 Consecoco's internal complaint log, and its internal audit findings.

1 As the result of the Market Conduct Exam, the CDI prepared and issued reports to
2 Conseco (and has issued or will imminently issue final reports) containing the CDI's findings and
3 containing Conseco's responses to such findings. The Market Conduct Exam findings are set
4 forth in Section IV hereof. The findings indicate that Conseco engaged in a pattern and practice
5 of violating the provisions of Insurance Code §§790.03, 10123.13, 10234.8, 10235.9, 10237.5
6 and 10235.40, the Fair Claims Settlement Practices Regulations, and its duties of good faith and
7 fair dealing.

8 **III**
9 **POLICYHOLDER COMPLAINTS**

10 The Complaint Investigation determined that Conseco violated the following provisions of
11 the Insurance Code, the Fair Claims Settlement Practices Regulations, and its duties of good faith
12 and fair dealing in handling and responding to the Complaints (including in responding to CDI
13 inquiries regarding the Complaints.) The violations are as follows.

14 A. Insurance Code §790.03(h)(1). The CDI received complaints from 11 policyholders
15 who each contended that Conseco misrepresented pertinent facts or insurance policy provisions
16 relating to coverages and/or who contended that Conseco denied claims submitted by those
17 policyholders based on such misrepresentations of facts or insurance policy provisions. Upon
18 contacting Conseco and reviewing its files pertaining to each Complaint, the Commissioner
19 determined that Conseco wrongly denied coverage and/or payment, misinterpreted and
20 misrepresented coverage, and committed 18 acts in violation of Insurance Code §790.03(h)(1).

21 B. Insurance Code §790.03(h)(2). The CDI received complaints from 14 policyholders
22 who each contended that Conseco failed to acknowledge and act reasonably promptly on
23 communications from them pertaining to claims under their Policies. Upon contacting Conseco
24 and reviewing its files and responses, the Commissioner determined that Conseco failed to
25 acknowledge and act reasonably promptly on communications from the policyholders and
26 committed 34 acts in violation of Insurance Code §790.03(h)(2).

27 C. Insurance Code §790.03(h)(3). The CDI received complaints from 34 policyholders
28 who contended that Conseco failed to have or implement reasonable standards to promptly

1 investigate and/or process claims, resulting in delayed payment or denial of claims under their
2 Policies. Upon contacting Conseco and reviewing its files and responses, the Commissioner
3 determined that Conseco failed to promptly investigate and/or process claims, delayed payments
4 and denied claims and committed 83 acts in violation of Insurance Code §790.03(h)(3).

5 D. Insurance Code §790.03(h)(4). The CDI received complaints from 18 policyholders
6 who contended that Conseco failed to promptly affirm or deny coverage of claims under their
7 Policies within a reasonable time after proof of loss requirements were completed. Upon
8 contacting Conseco and reviewing its files and responses, the Commissioner determined that
9 Conseco failed to affirm or deny coverage within a reasonable time after proof of loss
10 requirements were completed and committed 49 acts in violation of Insurance Code
11 §790.03(h)(4).

12 E. Insurance Code §790.03(h)(5). The CDI received complaints from 22 policyholders
13 who contended that Conseco did not attempt in good faith to effectuate prompt, fair and equitable
14 settlement of each of their claims upon which liability had become reasonably clear. Upon
15 contacting Conseco and reviewing its files and responses, the Commissioner determined that
16 Conseco failed to attempt in good faith to effectuate prompt, fair and equitable settlement of the
17 claims and committed 58 acts in violation of Insurance Code §790.03(h)(5).

18 F. Reg §2695.3(a). In reviewing Conseco's claims files as part of the Complaint
19 Investigation, the Commissioner determined that the claims files for 7 matters did not contain all
20 documents, notes and work papers (including copies of correspondence) which reasonably pertain
21 to a Policyholder's claims in such detail that pertinent events and dates of events could be
22 reconstructed and such that Conseco's actions pertaining thereto could be determined. The
23 foregoing constitutes 7 violations of Reg §2695.3(a) and constitutes 7 acts in violation of
24 Insurance Code §790.03(h)(2) (noted in Paragraph B above) and §790.03(h)(3).

25 G. Reg §2695.3(b)(2). In reviewing Conseco's claims files as part of the Complaint
26 Investigation, the Commissioner determined that the claims files for 6 matters did not record in
27 the file the date that every material and relevant document pertaining to a claim was produced and
28 transmitted. The foregoing constitutes 6 violations of Reg §2695.3(b)(2) and constitutes 6 acts in

1 violation of Insurance Code §790.03(h)(3) (noted in Paragraph C above.)

2 H. Reg §2695.3(b)(3). In reviewing Conseco's claims files as part of the Complaint
3 Investigation, the Commissioner determined that for 1 matter, Conseco did not maintain hard
4 copy files or claims files that are accessible, legible or capable of duplication to hard copy. The
5 foregoing constitutes 1 violation of Reg §2695.3(b)(3) and constitutes 1 act in violation of
6 Insurance Code §790.03(h)(3) (noted in Paragraph C above.)

7 I. Reg §2695.4(a). In reviewing Conseco's claims files as part of the Complaint
8 Investigation, the Commissioner determined that the claims files for 1 matter did not disclose to
9 the claimant all benefits, coverage, time limits or other provisions of the policy that might apply
10 to the claim presented. The foregoing constitutes 1 violation of Reg §2695.4(a) and constitutes 1
11 act in violation of Insurance Code §§790.03(h)(1) and (h)(3) (noted in Paragraphs A and C above)
12 and Insurance Code §790.03(h)(4).

13 J. Reg §2695.5(a). As part of the Complaint Investigation, the Commissioner made oral
14 and written requests to Conseco that it provide information regarding the Complaints, including
15 in some instances copies of Conseco's claim files. In 26 instances, Conseco's responses were not
16 provided to the Commissioner within 21 calendar days, or only incomplete responses were
17 provided (based on the information then known to Conseco), constituting 26 violations of Reg
18 §2695.5(a) and constituting 26 acts in violation of Insurance Code §§790.03(h)(2) and (h)(3)
19 (noted in Paragraphs B and C above.)

20 K. Reg §2695.5(b). In reviewing Conseco's claims files as part of the Complaint
21 Investigation, the Commissioner determined that in 28 instances, Conseco did not provide a
22 complete response to the claimants' inquiries within 15 calendar days in circumstances where the
23 communication from the claimant reasonably suggested that a response was expected. The
24 foregoing constitutes 28 violations of Reg §2695.5(b) and constitutes 28 acts in violation of
25 Insurance Code §§790.03(h)(2) and (h)(3) (noted in Paragraphs B and C above.)

26 L. Reg §2695.5(e)(1). In reviewing Conseco's claims files as part of the Complaint
27 Investigation, the Commissioner determined that in 6 instances, Conseco did not acknowledge
28 receipt of a notice of claim within 15 calendar days (or where the acknowledgement was verbal,

1 the acknowledgement was not noted in the claim files.) The foregoing constitutes 6 violations of
2 Reg §2695.5(e)(1) and constitutes 6 acts in violation of Insurance Code §§790.03(h)(2) and (h)(3)
3 (noted in Paragraphs B and C above.)

4 M. Reg §2695.5(e)(2). In reviewing Consecos claims files as part of the Complaint
5 Investigation, the Commissioner determined that in 3 instances, Consecos did not provide the
6 claimant with necessary forms, instructions and reasonable assistance specifying the information
7 the claimant needed to provide for the proof of claim within 15 calendar days of receipt of the
8 notice of claim. The foregoing constitutes 3 violations of Reg §2695.5(e)(2) and constitutes 3
9 acts in violation of Insurance Code §§790.03(h)(2) and (h)(3) (noted in Paragraphs B and C
10 above.)

11 N. Reg §2695.5(e)(3). In reviewing Consecos claims files as part of the Complaint
12 Investigation, the Commissioner determined that in 5 instances, Consecos did not, within 15
13 calendar days of receipt of a notice of claim, begin an investigation of the claim. Consecos
14 failure to timely commence investigation of the claims constitutes 5 violations of Reg
15 §2695.5(e)(3) and constitutes 5 acts in violation of Insurance Code §790.03(h)(3) (noted in
16 Paragraph C above.)

17 O. Reg §2695.7(b). In reviewing Consecos claims files as part of the Complaint
18 Investigation, the Commissioner determined that in 1 instance, Consecos did not, within 40
19 calendar days of receipt of a proof of claim, accept or deny the claim in whole or in part. The
20 foregoing constitutes 1 violation of Reg §2695.7(b) and constitutes 1 act in violation of Insurance
21 Code §790.03(h)(4) and (h)(5) (noted in Paragraph C above.)

22 P. Reg §2695.7(b)(1). In reviewing Consecos claims files as part of the Complaint
23 Investigation, the Commissioner determined that in 8 instances, Consecos did not provide a
24 statement in writing to the claimant listing all bases for denial of the claim. The foregoing
25 constitutes 8 violations of Reg §2695.7(b)(1) and constitutes 8 violations of Insurance Code
26 §§790.03(h)(3), (5) and (13).

27 Q. Reg §2695.7(b)(3). In reviewing Consecos claims files as part of the Complaint
28 Investigation, the Commissioner determined that in 5 instances, Consecos did not provide written

1 notice to the claimant of the claimant's right to have the claim denial reviewed by the CDI. The
2 foregoing constitutes 5 violations of Reg §2695.7(b)(3) and constitutes 5 acts in violation of
3 Insurance Code §790.03(h)(3).

4 R. Reg §2695.7(c)(1). In reviewing Conseco's claims files as part of the Complaint
5 Investigation, the Commissioner determined that in 10 instances, Conseco did not provide written
6 notice to the claimant every thirty days of Conseco's need for additional time to determine
7 whether to accept or deny a claim. The foregoing constitutes 10 violations of Reg §2695.7(b)(3)
8 and constitutes 10 acts in violation of Insurance Code §790.03(h)(3).

9 S. Reg §2695.7(d). In reviewing Conseco's claims files as part of the Complaint
10 Investigation, the Commissioner determined that in 10 instances, Conseco did not diligently
11 pursue a thorough, fair and objective investigation of a claim, and/or Conseco persisted in seeking
12 information that was not reasonably required for, or material to, resolution of the claim. The
13 foregoing constitutes 10 violations of Reg §2695.7(d) and constitutes 10 acts in violation of
14 Insurance Code §790.03(h)(3).

15 T. Reg §2695.7(h). In reviewing Conseco's claims files as part of its Complaint
16 Investigation, the Commissioner determined that in 3 instances, Conseco did not pay a claim
17 within 30 calendar days after acceptance thereof by Conseco. As to claims which do not pertain
18 to a claim for hospital, medical or surgical expenses under a disability policy for which a claim
19 was made to Conseco prior to January 1, 2006, the foregoing constitutes 3 violations of Reg
20 §2695.7(h).

21 U. Insurance Code §10123.13(a). Each of the acts set forth in Paragraphs (A) through (S)
22 of this Section which pertain to a claim for hospital, medical or surgical expenses under a
23 disability policy for which a claim was made to Conseco prior to January 1, 2006, and for which
24 an uncontested claim was not paid, in whole or part, within 30 working days of receipt thereof,
25 constitutes a violation of Insurance Code §10123.13(a) and to the extent that Conseco failed to
26 pay interest on such claims commencing on the 31st working day after receipt thereof, constitutes
27 a violation of Insurance Code §10123.13(b).

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1 IV

2 **MARKET CONDUCT EXAM**

3 As set forth in Article II, the CDI's Market Conduct Exam determined that Consecos
4 claims handling practices and procedures violate provisions of Insurance Code §§395, 790.03,
5 10123.13, 10234.8, 10235.9, 10235.40 and 10237.5 and the Fair Claims Settlement Practice
6 Regulations. The Market Conduct Exam indicates that Consecos engaged in a pattern and practice
7 of violating the foregoing Insurance Code sections and regulations and it violated its duties of
8 honesty, good faith and fair dealing. The Market Conduct Exam reports identified the following
9 violations.

10 A. Reg §2695.3(a). In 26 instances, Consecos's claim files did not contain copies of all
11 documents, notes and work papers (including copies of correspondence) which reasonably pertain
12 to policyholders' claims in such detail that pertinent events and dates of events could be
13 reconstructed and such that Consecos's actions pertaining thereto could be determined. The
14 examined files did not contain health assessment reports, letters from or to claimant or vendors,
15 invoices, calculation benefit worksheets, Alternative Plan of Care agreements, and waiver of
16 premium audit documents. The foregoing constitutes 26 violations of Reg §2695.3(a) and
17 constitutes 26 acts in violation of Insurance Code §§790.03(h)(2) and (h)(3).

18 B. Reg §2695.3(b)(2). In 7 instances Consecos's claim files did not record the date that
19 every material and relevant document pertaining to a claim was produced and transmitted.
20 The foregoing constitutes 7 acts in violation of Reg §2695.3(b)(2) and constitutes 7 acts in
21 violation of Insurance Code §790.03(h)(3).

22 C. Reg §2695.3(b)(3). In 174 instances, Consecos's physical claim files or electronic
23 systems did not maintain hard copy files or claims files that are accessible, legible or capable of
24 duplication to hard copy. The examined files did not contain explanation of benefit letters that
25 were sent to claimants in connection with Consecos's payment or denial of claims. The foregoing
26 constitutes 174 violations of Reg §2695.3(b)(3) and constitutes 174 acts in violation of Insurance
27 Code §790.03(h)(3).

28 D. Reg §2695.4(a). In 53 instances, Consecos did not disclose to the claimant all benefits,

1 coverage, time limits or other provisions of the policy that might apply to the claim. The
2 examined files indicated that Conseco did not advise policyholders of the applicable daily benefit
3 rates, elimination period, waiver of premium benefits, maximum benefit periods, prescription
4 drug benefits, emergency response systems, and other matters. The foregoing constitutes 53
5 violations of Reg §2695.4(a) and constitutes 53 acts in violation of Insurance Code
6 §§790.03(h)(1), (h)(3) and (h)(4).

7 E. Reg §2695.5(a). In 14 instances, the Commissioner made oral or written requests to
8 Conseco that it provide information regarding the complaint files. Conseco's responses were not
9 provided to the Commissioner within 21 calendar days, or only incomplete responses were
10 provided (based on the information then known to Conseco), constituting 14 violations of Reg
11 §2695.5(a) and constituting 14 acts in violation of Insurance Code §§790.03(h)(2) and (h)(3).

12 F. Reg §2695.5(b). In 77 instances, Conseco did not provide a complete response to a
13 claimant's inquiry within 15 calendar days in circumstances where the communication from the
14 claimant reasonably suggested that a response was expected. The foregoing constitutes 77
15 violations of Reg §2695.5(b) and 77 acts in violation of Insurance Code §790.03(h)(2) and (h)(3).

16 G. Reg §2695.5(e)(1). In 32 instances, Conseco did not, within 15 calendar days of
17 receipt of a notice of claim, adequately acknowledge the receipt of the notice of claim. The
18 examined files indicated that in certain instances, Conseco provided claim acknowledgment
19 letters that were generic in content and which did not refer to the actual claim that was submitted.
20 The foregoing constitutes 32 violations of Reg §2695.7(e)(1) and constitutes 32 acts in violation
21 of Insurance Code §790.03(h)(2) and (h)(3).

22 H. Reg §2695.5(e)(2). In 40 instances, Conseco did not, within 15 calendar days of
23 receipt of a notice of claim, provide the claimant with necessary forms, instructions and
24 reasonable assistance specifying the information the claimant had to provide for a proof of claim.
25 The examined files indicate that Conseco denied claims in circumstances where it should have
26 advised the claimant of the need to use updated forms, provide copies of powers of attorney,
27 provide daily progress notes, provide itemized invoices, provide Approved Plan of Care
28 agreements, and provide more legible copies of invoices. The examined files indicate that

1 Conseco referred to internal Conseco codes and abbreviations in its communications which are
2 not understandable to claimants. The examined files further indicate that Conseco's claims
3 handling procedures provided a different customer service representative or claim handler upon
4 each inquiry from a claimant and Conseco refused or failed to refer a subsequent inquiry to the
5 Conseco representative that previously handled the matter. The examined files further indicate
6 that Conseco advised claimants that they were only permitted to address one or two claim issues
7 on any particular phone call. The foregoing constitutes 40 violations of Reg §2695.54(e)(2) and
8 constitutes 40 acts in violation of Insurance Code §790.03(h)(2) and (h)(3).

9 I. Reg §2695.5(e)(3). In 20 instances, Conseco did not, within 15 calendar days of
10 receipt of a notice of claim, begin investigation of the claim. The foregoing constitutes 15
11 violations of Reg §2695.5(e)(3) and constitutes 20 acts in violation of Insurance Code
12 §790.03(h)(3).

13 J. Reg §2695.7(b)(1). In 26 instances, Conseco did not provide a statement in writing to
14 a claimant denying a claim and/or specifying the factual and legal basis for denial of a claim. The
15 foregoing constitutes 26 violations of Reg §2695.7(b)(1) and constitutes 26 acts in violation of
16 Insurance Code §§790.03(h)(3), (h)(5) and (h)(13).

17 K. Reg §2695.7(b)(3). In 13 instances, Conseco did not provide written notice to a
18 claimant whose claims was denied that the claimant had the right to have the denial reviewed by
19 the CDI. The foregoing constitutes 13 violations of Reg §2695.7(b)(3) and constitutes 13 acts in
20 violation of Insurance Code §790.03(h)(3).

21 L. Reg §2695.7(c)(1). In 8 instances, Conseco did not provide written notice to a
22 claimant every thirty days of Conseco's need for additional time to determine whether to accept or
23 deny the claim. As to claims under an LTC Policy which were made to Conseco prior to January
24 1, 2006, the foregoing constitute violations of §2695.11(d). As to all other policies, the foregoing
25 constitute violations of Reg §2695.7(b)(3). All such instances constitute 8 acts in violation of
26 Insurance Code §790.03(h)(2), (h)(3) and (h)(5).

27 M. Reg §2695.7(d). In 69 instances, Conseco did not diligently pursue a thorough, fair
28 and objective investigation of a claim, and/or Conseco persisted in seeking information that was

1 not reasonably required for, or material to, resolution of the claim. The examined files indicate
2 that Conseco did not seek to clarify information in its possession, it abandoned claims rather seek
3 missing information, it determined discrepancies against the interest of the policyholder, it failed
4 to provide an independent evaluator of eligibility, it resolved conflicting lifeplan reports against
5 the interest of the policyholder, it failed to respond to coverage inquiries or requests from
6 policyholders, it requested duplicative information from claimants, it required forms and
7 certifications for information already in its possession, it required forms and certifications from
8 policyholders who were impaired by Alzheimer's or related conditions, it terminated benefits
9 without justification, it delayed payment of claims by seeking information from claimants over a
10 period of time rather than seeking all information at once, and it required invoices in
11 circumstances where policy benefits were payable based upon daily progress notes already in its
12 possession. The foregoing constitutes 69 violations of Reg §2695.7(d) and constitutes 69 acts in
13 violation of Insurance Code §§790.03(h)(3), (h)(4) and (h)(5).

14 N. Reg §2695.7(g). In 106 instances, Conseco attempted to settle claims by making
15 settlement offers that were unreasonably low. The examined files indicate that Conseco did not
16 pay covered benefits, miscalculated benefits, made frequent calculation errors, applied incorrect
17 benefit rates, applied incorrect policy factors, omitted payments for dates on which covered
18 services were provided, miscalculated elimination periods, miscalculated waiver of premium
19 elimination periods, and made other errors in the adjustment of claims that resulted in low
20 settlement offers. The foregoing constitutes 106 violations of Reg §2695.7(g) and constitutes 106
21 acts in violation of Insurance Code §790.03(h)(3) and (h)(5).

22 O. Reg §2695.7(h). In 36 instances, Conseco did not pay a claim within 30 calendar days
23 after acceptance thereof by Conseco. The foregoing constitutes 36 violations of Reg §2695.7(h)
24 and constitutes 36 acts in violation of Insurance Code §§790.03(h)(3), (h)(4) and (h)(5).

25 P. §2695.11(b). In 276 instances, Conseco failed to provide claimants with an
26 explanation of benefits with each claim payment that identified the name of the service provided,
27 the services provided, the dates of the covered services provided, and a clear explanation of the
28 manner in which Conseco computed the benefits that were allowed. The examined files indicate

1 that Consecos explanation of benefits failed to specify, among other matters, the following: dates
2 of services for which benefits were paid or denied, the number of days of benefits paid and
3 denied, application of elimination periods, computation of daily benefit rates, manner of
4 application of inflation benefit provisions, inflation benefit rates, benefits and plans of care,
5 computation and calculation of each policy benefit provided, and changes in benefit rates for
6 policies with inflation benefit factors. Further, Consecos explanation of benefits
7 used Consecos internal codes or abbreviations that are not understandable. Further, Consecos
8 explanation of benefits failed to differentiate payment of newly submitted claims from readjusted
9 payment of previously submitted claims. The foregoing constitutes 276 acts in violation of Reg
10 §2695.11(b) and 276 acts in violation of Insurance Code §§790.03(h)(3)(5) and (13).

11 Q. Insurance Code §§790.03(h)(5) and 10234.8. In 181 instances, Consecos failed to
12 effectuate prompt, fair and equitable settlements in connection with claims on LTC Policies when
13 liability had become reasonably clear. Consecos conduct in violation of Insurance Code
14 §790.03(h)(5) included the following practices and matters.

- 15 1. Improper Application of Waiver of Premium Provisions. In policies that
16 contained waiver of premium (WP) benefits, Consecos:
- 17 a. failed, either entirely or in a timely fashion, to apply WP provisions per policy
18 terms, resulting in some instances in the erroneous lapse or cancellation of a policy;
 - 19 b. delayed application of WP provisions;
 - 20 c. failed to adequately respond to policyholder inquiries regarding WP provisions;
 - 21 d. unreasonably delayed notifying policyholders when WP provisions expired;
 - 22 e. refused to apply WP provisions on a policy issued jointly to a husband and wife
23 where one spouse qualified for a waiver;
 - 24 f. refused to permit premiums to be deducted from claims payments, contrary to
25 policy provisions;
 - 26 g. commenced calculation of a WP elimination period after expiration of a policy
27 benefit elimination period, contrary to reasonable interpretation of policy provisions (periods run
28 concurrently);

1 2. Improper Interpretation of Medicare Nonduplication Rules. The Commissioner
2 is informed and believes that average age of an insured under a Consecro LTC Policy is 80 and
3 many insureds under Consecro LTC Policies are eligible for Medicare coverage. Under limited
4 circumstances Medicare provides long term care benefits. Pursuant to 42 U.S. C. A. §1395ss,
5 certain private insurance policies under certain circumstances may not duplicate Medicare long
6 term care coverage (“Nonduplication Rules.”) Consecro improperly interpreted the
7 Nonduplication Rules and denied coverage under its LTC Policies without a reasonable basis, as
8 follows:

- 9 a. automatically denied or delayed benefits for 20 days to policyholders who were
10 eligible for Medicare coverage;
- 11 b. denied or delayed benefits for 20 days without determining whether the
12 policyholder was receiving long term care coverage from Medicare;
- 13 c. denied or delayed benefits for 20 days without determining whether long term
14 care coverage being provided by Medicare duplicated policy benefits;
- 15 d. denied or delayed benefits for 20 days on when Consecro policy provided per
16 diem payments and as such was not subject to Nonduplication Rules;
- 17 e. denied or delayed benefits for 20 days as to Consecro policies that were non-tax
18 qualified or otherwise not subject to Nonduplication Rules.

19 3. Improper Application of Policy Provisions and Improper Claims Adjustment.
20 Consecro failed to correctly apply provisions in LTC Policies and failed to properly adjust claims
21 as follows:

- 22 a. misapplied benefits, including hospitalization requirements;
- 23 b. miscalculated benefits;
- 24 c. misinterpreted policy coverages;
- 25 d. failed to follow internal guidelines for claim follow-up (e.g., obtaining
26 additional documentation);
- 27 e. placed “holds” on adjusting or paying claim when a separate claim was under
28 audit;

- 1 f. categorized claims as “abandoned” and closed them for unstated reasons,
2 without accepting or denying claim;
- 3 g. denied claims eligible for coverage which had been already validated by
4 Conseco’s independent health assessment reports;
- 5 h. denied claims where discrepancies existed in claims material, without
6 investigating the discrepancies;
- 7 i. automatically denied claims if a physician certification had expired;
- 8 j. denied claims by requiring licensure of service providers even though licensure
9 was not required by LTC Policy;
- 10 k. required duplicate submissions by policyholder due to Conseco’s failure to
11 properly process claims;
- 12 l. required resubmission of physician certification forms on a new form, when
13 Conseco already possessed all information required by the new form;
- 14 m. denied claims when trivial or easily obtainable information had not been
15 provided or information on forms was not legible;
- 16 n. failed to update files with new addresses, causing delays;
- 17 o. sent claim information to policyholders or providers without adequately
18 identifying the claim;
- 19 p. assigned multiple adjusters to handle claims under one policy, without adequate
20 coordination or assignment of responsibility;
- 21 q. paid “lower benefits” and lowest allowable hours without validation of actual
22 charges.

23 R. Insurance Code §10235.9(b). In 35 instances, Conseco failed to provide a
24 policyholder with written notice within 40 days of the date of denial of a claim specifying the
25 reasons for the denial and with all information directly relating to the denial. The foregoing
26 constitutes 35 violations of Insurance Code §10235.9(b) and constitutes 35 violations of
27 Insurance Code §§790.03(h)(5) and 10234.8(a).

28 S. Insurance Code §10237.5(b). In 8 instances, Conseco failed to obtain a rejection of

1 inflation protection coverage form required by Insurance Code §10237.5(b) for LTC Policies and
2 Conseco did not provide inflation protection coverage. The foregoing constitutes 8 violations of
3 Insurance Code §10237.5(b) and constitutes 8 violations of Insurance Code §10234.8(a).

4 T. Insurance Code §10235.40(d). In 3 instances, Conseco sent notices to policyholders
5 regarding purported policy lapses that would occur within specified time periods that were less
6 than 30 days. The foregoing constitutes 3 violations of time period specified by Insurance Code
7 §10235.40(d) and constitutes 3 violations of Insurance Code §10234.8(a).

8 U. Insurance Code §10234.8(a). In 13 instances (not set forth in Paragraphs R, S and T
9 above), Conseco breached its duty of honesty and its duty of good faith and fair dealing as
10 follows:

- 11 1. assigned multiple adjuster to handle one policy without reasonable coordination or
12 supervision, resulting in matters not being handled diligently, efficiently, or properly;
- 13 2. refused to review whether a claim that payments had been omitted on the grounds that
14 other claims were pending, causing delay in payment of claims;
- 15 3. refused to provide policyholders with WP audits, requiring the policyholder to retain
16 an accountant, refused to reconcile the policyholder's accounts reports with Conseco records, and
17 refused to account for WP credits;
- 18 4. provided untimely notification to policyholders of the expiration of WP benefits;
- 19 5. refused to deal with policyholder's representative;
- 20 6. misrepresented terms and conditions of LTC Policies to claimants; and
- 21 7. misrepresented that payments had been made, when in fact they had not.

22 V. Insurance Code §395. In one instance, Conseco charged an LTC policyholder \$25 for
23 a copy of the policy, in violation of Insurance Code §395, thus constituting 1 violation of
24 Insurance Code §10234.8(a).

25 V

26 **ACCUSATION - STATEMENT OF GENERAL CHARGES**

27 A. The practices, acts and violations determined in the Complaint Investigation and the
28 Market Conduct Exam, as set forth in Articles III and IV, and the pattern and frequency of such

1 practices, acts and violations, indicate that Consecro knowingly committed and performed such
2 matters with such frequency as to indicate general business practices of unfair claims settlement
3 practices, improper interpretation of LTC Policy provisions regarding Medicare Nonduplication
4 Rules, improper interpretation of LTC Policy waiver of premium provisions, improper application
5 of waiver of premium provisions, improper calculation of inflation benefit factors, improper
6 denial of inflation benefit factors, and other general business practices in violation of California
7 law. Such practices are in violation of Consecro's duties of honesty, and good faith and fair
8 dealing. As specified in Articles III and IV, the practices include the following:

9 1. misrepresenting to claimants pertinent facts or insurance policy provisions relating to
10 coverages, including denying claims based on such misrepresentations, in violation of Insurance
11 Code §790.03(h)(1);

12 2. failing to acknowledge and act reasonably promptly upon communications with respect
13 to claims, in violation Insurance Code §790.03(h)(2);

14 3. failing to adopt and implement reasonable standards for the prompt investigation and
15 processing of claims, resulting in delay in payment or processing of claims and in resulting in
16 improper denial of claim, in violation of Insurance Code §790.03(h)(3);

17 4. failing to affirm or deny coverage of claims within a reasonable time after proof of loss
18 requirements have been completed and submitted, resulting in delay in payment or processing of
19 claims, in violation of Insurance Code §790.03(h)(4);

20 5. not attempting in good faith to effectuate prompt, fair and equitable settlement of
21 claims in which liability has become reasonably clear, resulting in delay in payment or processing
22 of claims and in resulting in improper denial of claim, in violation of Insurance Code
23 §790.03(h)(5);

24 6. failing to provide promptly a reasonable explanation of the basis relied on in an
25 insurance policy for the denial of a claim, in violation of Insurance Code §790.03(h)(13);

26 7. engaging in acts and practices that are unfair or deceptive and that are not defined in
27 Insurance Code §790.03;

28 8. failing to pay claims within the time specified in Insurance Code §10123.13;

- 1 9. failing to pay interest as required by Insurance Code §10123.13;
2 10. failing to provide a written notice regarding the denial of a claim as required by
3 Insurance Code §10239.5(b);
4 11. failing to provide 30 days written prior to termination of a policy as required by
5 Insurance Code §10234.40(d); and
6 12. failing to obtain a rejection form mandated by §10237.5.

7 B. The matters set forth in Paragraph A above and in Articles III and IV indicate that
8 Consecro has failed to comply with the requirements of Insurance Code §717(e) as to the
9 competency, character and integrity of its management, the requirements of Insurance Code
10 §717(g) as to whether claims are promptly and fairly adjusted and are promptly and fully paid in
11 accordance with the law and the terms of the policies, and the requirements of Insurance Code
12 §717(h) as to the fairness and honesty of methods of doing business.

13 **VI**

14 **ORDER TO SHOW CAUSE**

15 WHEREAS, the Commissioner has reason to believe that Consecro engaged in or is
16 engaging in the unfair or deceptive acts or practices and other unfair or unlawful acts set forth in
17 Articles III, IV and V (collectively, "Acts"); and

18 WHEREAS, the Commissioner has reason to believe that a proceeding with respect to
19 Consecro's Acts is in the public interest;

20 NOW, THEREFORE, pursuant to Insurance Code §§790.035, 790.05, 10234.2, 10234.3,
21 and 10234.5, Consecro is ordered to appear before the Commissioner on a date and time to be set
22 by the Office of Administrative Hearings located at 1515 Clay Street, Suite 206, Oakland,
23 California 94612 and show cause, if any cause there be, why the Commissioner should not issue
24 an Order requiring Consecro to cease and desist from engaging in the methods, acts, and practices
25 set forth in Articles III, IV, and V hereof and imposing the penalties set forth in the Prayer herein.

26 **VII**

27 **SUSPENSION OF CERTIFICATE OF AUTHORITY**

28 A. Based on the matters set forth in Articles III, IV and V, the Commissioner alleges that

1 Conseco has not carried out its contracts in good faith and has habitually and as a matter of
2 ordinary practice and custom compelled claimants under policies to accept less than the amounts
3 due under the terms of the policies and pursuant to Insurance Code §704, its Certificate of
4 Authority should be suspended for a period not exceeding one year.

5 B. Based on the matters set forth in Articles III, IV and V, the Commissioner alleges that
6 Conseco has violated the provisions of Division 2, Part 2, Chapter 2.6 of the Insurance Code
7 (Long-Term Care Insurance) and pursuant to Insurance Code §10234.4(b), its Certificate of
8 Authority should be suspended.

9 VIII

10 **REVOCATION OF CERTIFICATE OF AUTHORITY**

11 Based on the matters set forth in Articles III, IV and V, the Commissioner alleges that
12 Conseco has failed, and continues to fail, to comply with the requirements as to its business set
13 forth in the Insurance Code and in other laws of the State of California as required by Insurance
14 Code §700(c.) Conseco has failed to comply with the requirements of Insurance Code §790.03,
15 790.03, 10123.13, 10234.8, 10235.9, 10235.40, and 10237.5 and the Fair Claims Settlement
16 Practices Regulations. Further, Conseco has failed to comply with the requirements of Insurance
17 Code §717(e) as to the competency, character and integrity of its management, Insurance Code
18 §717(g) as to whether claims are promptly and fairly adjusted and are promptly and fully paid in
19 accordance with the law and the terms of the policies, and Insurance Code §717(h) as to the
20 fairness and honesty of methods of doing business. Accordingly, Conseco's Certificate of
21 Authority should be revoked.

22 IX

23 **NOTICE OF PENALTIES AND PRAYER**

24 The Commissioner prays for the following:

- 25 1. An Order to Cease and Desist from engaging in such unfair acts or practices in
26 violation of Insurance Code §790.03, the Fair Claims Settlement Practices Regulations, and the
27 Long-Term Care Insurance provisions of the Insurance Code;
- 28 2. Pursuant to Insurance Code §790.035, for unfair acts or deceptive acts or practices as

ATTACHMENT A

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Etta S.
Robert C.
Rosi W.
Veda C.
Jewel D.
Grace V.
Marie B.
James M.
Marie B.
Mary W.
Virginia W.
Russel D.
Franklin G.
Adolfo J.
Emeline J.
Betsy K.
Marjorie L.
Dale B.
Orlene A.
William T.

Clementine A.
Sylvia B.
Ina and James M.
James L.
Betty and Gordon L.
Frank F.
Geneva R.
Teresa S.
Ella A.
Janice K.
Kathleen M.
June L.
Joseph H.
Catherine H.
Mary L.
Alice F.
Eloise M.
Leonore B.
Beatrice B.
Mary S.

Nancy C.
Sidney S.
Rebecca C.
Floyd E.
Michael and Mary R.
June E.
Mara S.
Omer M.
Mary M.
Norma P.
Ken C.
Takakazu K.
Judith C.
Zelma M.
Inez D.
Viola L.
Meyer A.
Helen H.
Bettie B.