

**STATE OF VERMONT
DEPARTMENT OF BANKING, INSURANCE, SECURITIES
& HEALTH CARE ADMINISTRATION**

In re:	American Progressive Life &)	
	Health Insurance Company of)	
	New York)	DOCKET NO. 07-026-I
)	

ORDER ADOPTING REPORT OF EXAMINATION

NOW COMES Paulette Thabault, Commissioner of the Vermont Department of Banking, Insurance, Securities and Health Care Administration, and hereby issues the following Order adopting the Market Conduct Examination Report in the above referenced docket number, subject to the exceptions and qualifications discussed below.

FINDINGS OF FACT

1. Pursuant to the authority granted by Vermont law, including, but not limited to, that contained in 8 V.S.A. §§ 10-13, 18, 3564-3574 and 4726, the Commissioner of the Department of Banking, Insurance, Securities and Health Care Administration (“the Department”) is charged with administering and enforcing the insurance laws and regulations of the State of Vermont and is authorized to conduct periodic examinations of insurers and licensees to determine whether they are in compliance with said laws and regulations.

2. American Progressive Life & Health Insurance Company is a life and health insurance company organized under the laws of the State of New York. This Order shall refer to American Progressive Life & Health Insurance Company as “the Company.”

3. On November 13, 2006, a final market conduct examination report was issued by examiners James Montgomery III, Robbie Kriplean and Jennifer Greenway on behalf of the Vermont Department of Banking, Insurance, Securities and Health Care Administration (hereinafter “the Report”).

4. In accordance with the requirements of 8 V.S.A. § 3574(b), the Report was transmitted to the Company and the Company was afforded a reasonable period of time to submit a formal written response to the findings of the Report. The Company submitted a formal response (“the Response”), addressing the issues raised in the Report with the Department.

5. Pursuant to 8 V.S.A. § 3574(c), the undersigned Commissioner has considered fully the Report and the Company’s Response.

CONCLUSIONS OF LAW

6. Unless specified otherwise, the Department adopts the Report as it has been written.

7. In the section of the report entitled “**REPLACEMENTS**” (page 8), the examiners found numerous violations of Regulation 2001-3. Specifically, the examiners found: a failure to inform producers of the requirements of Reg. 2001-3 and to incorporate those requirements in all relevant training manuals, in violation of Reg. 2001-3 § 4.A(1); the failure to implement procedures to confirm the requirements of the regulation have been met, in violation of Reg. 2001-3 § 4.A(4); the failure to require a signed statement by

both the applicant and the producer as to whether the applicant has existing policies, in violation of Reg. 2001-3 § 4.C; the failure to provide the policy or contract owner, where a replacement was involved, notice of the right to return the contract within 30 days for an unconditional full refund of all consideration paid, in violation of Reg. 2001-3 § 5.A(4); the failure to provide a signed statement identifying any preprinted or electronically presented sales material used, or a statement that the producer used only company approved sales material, in violation of Reg. 2001-3 §§ 3.E and 5.C(1), respectively; the failure to verify that the required forms are received and in compliance with the regulation, for each replacement, in violation of Reg. 2001-3 § 5.A(1); the failure to provide a notice regarding replacements in the form prescribed by the regulation (set forth in Appendix A to the regulation), resulting in violations of Reg. 2001-3 §§ 3.B and 4.D; the failure to notify the existing insurer, affected by the proposed replacement, within five business days, in violation of Reg. 2001-3 § 5.A(2); the failure to record the replacement in a replacement register, in violation of Reg. 2001-3 § 4.B(5); the failure to produce all replacement notices received, and to inform the contract holder of the right to receive information regarding the existing contract values, in violation of Reg. 2001-3 § 6.A and B; the failure to obtain an answer to the replacement question on the applicant, in violation of Reg. 2001-3 § 8.A(2) and 8 V.S.A. § 4724; and obtaining incorrect and/or incomplete replacement information on applications. Additionally, the company delayed more than three months in providing records of the producers' replacement activity, notwithstanding the requirements of Reg. 2001-3 § 4.B that the company implement procedures for monitoring this information. Finally, the examiners

found that the company used an application for life insurance that was not filed for approval, in violation of 8 V.S.A. § 3541.

The company acknowledged most of these violations, disputing only the finding that the application had not been filed for approval. The company's response included the Department's approval of the application. The company argued that the "Important Notice" it used prior to March 2005 is substantially the same as the required form set forth in Appendix A, and stated that the company provided customers with the 30 day right to refunds albeit without providing the customers with notice of that right. In addition, the company emphasized that, effective March 1, 2006, the company ceased to accept replacement business in Vermont.

The examiners recommended that, in the event the company reverts to accepting replacement business in Vermont, that the company inform its producers of the requirements of Reg. 2001-3 and incorporate those requirements in its training manuals, take steps to ensure that the existing insurer be notified within 5 business days of any proposed replacement, and implement procedures for accurately recording replacements in a register. The company agreed to these proposals.

The examiners further recommended that the company implement procedures to ensure that all applications are reviewed for completeness and accuracy, to which the company does not object. Finally, the examiners recommended that the company furnish notification and full disclosure to each of the policy or contract holders that their rights under Vermont law may not have been provided, including a description of the specific right now being afforded, such as the right to a full refund after a 30 day free look period.

The company objected to this recommendation, stating that they found no complaints relating to replacements or the right to return the policy or contract for a full refund, and that offering additional time at this point might be confusing to policyholders. The absence of a complaint does not prove the absence of harm to affected policyholders. Some policyholders might have chosen to return their policies if given the opportunity, but not knowing of the legal requirement violated by the company, did not know to complain. As for potential confusion, the wording of the remediation notice should alleviate any confusion by articulating the basis for the company's tardiness in notifying the policy holder of their right to 30 days within which to return the policy for a refund.

Upon consideration, the Department adopts this section of the Report and the examiners' recommendation. The company shall file, for the Department's approval, a notice to affected policyholders, 30 days from the effective date of this order, and shall pay an administrative fine of \$27,000 for the 27 replacement policies sold during the examination period.

The Department accepts the company's explanation of the filing of its certificate of acceptance/supplement to application, and does not accept the examiners' finding that the company used an unfilled application. The Department rejects the company's argument that its former notice complied substantially with the requirements of Regulation 2001-3 Appendix A, but accepts the remediation of this defect with the company's March 2005 substitution with a compliant notice and finds that no further action is necessary.

8. In the section of the report entitled "**TRADE PRACTICES**" (page 15), the examiners found that the company did not develop suitability worksheets prior to June 2004, and that of 20 annuity files reviewed that did not contain suitability worksheets, 13

were sold to consumers over the age of 70. The company did not dispute these findings, and stated that the company stopped accepting all annuity business effective September 30, 2006. The examiners recommended that the company implement procedures to ensure that suitability worksheets are completed for every annuity submitted, to which the company agreed in the event the company resumes accepting annuity business in the future.

The examiners also found that the company used a brochure that contained misleading statements and illustrations as to the benefits of the referenced annuity, in violation of 8 V.S.A. § 4724(2). The company agreed, and stated that the brochure has not been used since 2004, and that the company will ensure that its advertisements are appropriate in the event it resumes accepting annuity business.

The examiners also found that the company used a telephonic interview form which contained a question regarding positive HIV tests, in violation of 8 V.S.A. § 4724(20)(A). The company responded that the question has been replaced with a question regarding diagnosis or treatment, which complies with the statute.

Upon consideration, the Department adopts this section of the Report and the examiners' recommendation. The violations of 8 V.S.A. § 4724 warrant the imposition of a \$3,000 administrative penalty. Furthermore, the company shall review the 13 annuity sales made to consumers of the age of 70 referenced in the examination for suitability within 30 days of the effective date of this Order, and report to the Department the results of that review.

9. In the section of the report entitled "COMPLAINTS" (page 17), the examiners found that the company failed to furnish the annual summary of complaints, in violation

of Regulation 76-1 § 5, from 2002 through 2005. The company did not dispute this finding, and on May 26, 2006 furnished the examiners with the requisite information.

The examiners also found the company failed to respond to a Department inquiry within 15 days, in violation of Regulation 79-2 § 5.C, which the company acknowledged. The examiners noted that 6 of the 11 complaints received by the Department against the company concerned delays.

Upon consideration, the Department adopts this section of the Report. The Department accepts the company's remediation of the annual complaint summary requirement, and finds an administrative penalty of \$400 is appropriate for the four years' noncompliance.

10. In the section of the report entitled "**REPORTS OF LEGAL ACTIONS**" (page 19), the examiners found that the company failed to file the notice required by Bulletin 30, for the years 2003 through 2005, which the company acknowledged and on which the company undertook corrective action during the examination.

Upon consideration, the Department adopts this section of the Report. The Department accepts the company's remediation of the Bulletin 30 requirement, and finds an administrative penalty of \$300 is appropriate for the three years' noncompliance.

11. In the section of the report entitled "**FINES & PENALTIES**" (page 20), the examiners detail the results of the legal actions required to be reported under Bulletin 30. This section entails no findings, and requires no further action from that set forth in the preceding section.

ORDER

Based upon the Findings of Fact and Conclusions of Law set forth above, **IT IS THEREFORE ORDERED** by the Commissioner of the Department of Banking, Insurance, Securities and Health Care Administration that the MARKET CONDUCT EXAMINATION REPORT OF THE AMERICAN PROGRESSIVE LIFE & HEALTH INSURANCE COMPANY OF NEW YORK BY VERMONT DEPARTMENT OF BANKING, INSURANCE, SECURITIES AND HEALTH CARE ADMINISTRATION (which is incorporated herein by reference) shall be and hereby is adopted with the following modifications and clarifications:

12. As discussed in Paragraph 7 above, the Department adopts the “**REPLACEMENTS**” section of the Report, as modified therein; in the event the company reverts to accepting replacement business in Vermont, the company shall inform its producers of the requirements of Reg. 2001-3 and incorporate those requirements in its training manuals, take steps to ensure that the existing insurer be notified within 5 business days of any proposed replacement, and implement procedures for accurately recording replacements in a register; the company implement procedures to ensure that all applications are reviewed for completeness and accuracy; the company furnish notification and full disclosure to each of the policy or contract holders that their rights under Vermont law may not have been provided, including a description of the specific right now being afforded, and shall file, for the Department’s approval, a notice to affected policyholders, 30 days from the effective date of this order. The company shall pay an administrative fine of \$27,000 for the 27 replacement policies sold during the examination period.

13. As discussed in Paragraph 8 above, the Department adopts the “**TRADE PRACTICES**” section of the report. The Company shall implement procedures to ensure that suitability worksheets are completed for every annuity submitted, in the event the company resumes accepting annuity business in the future; the company will ensure that its advertisements are appropriate in the event it resumes accepting annuity business; and the company shall review the 13 annuity sales made to consumers of the age of 70 referenced in the examination for suitability within 30 days of the effective date of this Order, and report to the Department the results of that review. The company shall pay an administrative fine of \$3,000 for the violations of 8 V.S.A. § 4724.

14. As discussed in Paragraph 9 above, the Department adopts the “**COMPLAINTS**” section of the Report. The company shall pay an administrative fine of \$400 for noncompliance.

15. As discussed in Paragraph 10 above, the Department adopts the “**REPORTS OF LEGAL ACTIONS**” section of the Report. The company shall pay an administrative fine of \$300 for noncompliance.

16. As discussed in Paragraph 11 above, the Department adopts the “**FINES AND PENALTIES**” section of the Report, and finds that no further action is required.

17. All penalties described above shall be paid to the Department no later than 10 days after the expiration of the appeal deadline of this Order, or other administrative or judicial order as appropriate.

PURSUANT TO 8 V.S.A. § 3574(c), THIS ORDER AND REMEDIAL ACTION SET FORTH HEREIN MAY BE APPEALED TO THE COMMISSIONER BY FILING AN ADMINISTRATIVE APPEAL WITHIN

**THIRTY (30) DAYS OF THE DATE SET FORTH BELOW. FURTHER
REMEDIAL ACTIONS AND PENALTIES ORDERED UPON RECEIPT OF
INFORMATION ORDERED HEREIN MAY BE APPEALED WITHIN THIRTY
(30) DAYS OF SUBSEQUENT DECISIONS BY THE DEPARTMENT.**

Dated at Montpelier, Vermont this 1 day of March, 2007.

Department of Banking, Insurance,
Securities and Health Care Administration

By: Paulette Thabault
Paulette Thabault, Commissioner
Department of Banking, Insurance, Securities and
Health Care Administration