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Technical Assistance Advisory 2021-01¹

TO: All Websites that Review Insurance Plans; Insurance Producers and Insurers

FROM: Insurance Commissioner Mike Kreidler

DATE: February 19, 2021

SUBJECT: Unlicensed Producer Activity

The purpose of this Technical Assistance Advisory (“TAA”) is to summarize current law and to provide guidance for websites that provide reviews of insurance plans, and insurers and insurance producers that pay them.

Background

The Insurance Commissioner has become aware that websites reviewing insurance plans (“review websites”) are becoming increasingly common and potentially violate statutes regarding producer licensure and unlicensed producer business. The Insurance Commissioner has taken two related enforcement actions, one against a review website for unlicensed producer violations, and the other against a licensed insurance producer for accepting business from this review website.²

The Insurance Commissioner issues this TAA to assist insurers, insurance producers, and review websites in complying with Insurance Code prohibitions on unlicensed solicitation, accepting business from unlicensed producers and paying commission to unlicensed producers.³

Unlicensed Solicitation

Review websites violate the Insurance Code when they are not licensed as producers and solicit Washington state consumers, i.e., urge a consumer to apply for a particular kind of insurance from a particular insurer.⁴ For example, one review website violated the law when it encouraged pet owners of a particular type of dog to buy pet insurance from a particular insurer. Review websites may state

¹This advisory is an interpretive policy statement released to advise the public of the OIC's current opinions, approaches, and likely courses of action. It is advisory only. RCW 34.05.230(1).

² See *Trupanion Managers USA, Inc.*, Consent Order Levying a Fine, No. 19-0249 (June 24, 2019), available at: <https://fortress.wa.gov/oic/consumertoolkit/Orders/OrderProfile.aspx?OrderNumber=2UeQLZAGa2nMS2ugLbmsew%253D%253D>; and *Reviews.com, LLC*, Consent Order Levying a Fine and Rescinding Order to Cease and Desist No. 20-0553 and Order Imposing Fine No. 20-0812, No. 20-0771 (Jan. 29, 2021), available at: <https://fortress.wa.gov/oic/consumertoolkit/Orders/OrderProfile.aspx?OrderNumber=ZxH3EhWTUgu6vfse3GgAhQ%253D%253D>.

³ See RCW 48.17.060(1); RCW 48.17.490(1), (2); and RCW 48.17.530(1)(1).

⁴ See RCW 48.17.060(1); RCW 48.17.010(14).

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that they provide their “objective” opinion and are not urging consumers to buy particular insurance from a particular insurer. However, this is not a defense if the review urges a consumer to buy a particular insurance from a particular insurer. Some review websites are licensed as insurance producers and are therefore not in violation of the Insurance Code. Review websites do not need to receive compensation from consumers or health insurers in order to be in violation of our Insurance Code.⁵

Further, many review websites receive compensation for each consumer that fills out an application. In this sense, these websites have an incentive to encourage consumers to purchase insurance. Those that receive a commission, service fee, or other valuable consideration for unlicensed solicitation are in further violation of the Insurance Code.⁶ These websites may believe that they are accepting compensation for referrals permitted by law.⁷ However, an unlicensed review website may only receive referral compensation or a referral fee if the following conditions are met:

- (1) The referral compensation or fee does not depend upon whether the referral results in a purchase or sale;
- (2) If insurance is purchased, the purchase is not a factor in determining the value of the referral compensation or the amount of the referral fee; and
- (3) The recipient of the referral compensation or fee does not make representations to the prospective insured about the terms of or specific need for a policy.⁸

Most review websites that review insurance plans make representations about the terms of the insurance plans. As a result, most review websites are soliciting insurance business and must be licensed as insurance producers.

Misconduct by Associated Insurers and Insurance Producers

Insurers and insurance producers who pay unlicensed review websites or accept business from them may be in violation of the Insurance Code.⁹ Under RCW 48.17.490(1), insurance companies and insurance producers shall not pay a commission, service 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 Chapter 48.17 RCW or Chapter 48.15 RCW and is not so licensed. Furthermore, RCW 48.17.530(1)(1) prohibits insurance producers from knowingly accepting insurance business from a person who is required to be licensed under this title and is not so licensed.

Please direct any questions about this advisory to Ellen Range, Insurance Enforcement Specialist, at EllenR@oic.wa.gov, or at 360-725-7261.

⁵ *Id.*

⁶ *See* RCW 48.17.490(2).

⁷ *See* WAC 284-17-825.

⁸ *Id.*

⁹ *See* RCW 48.17.490(1); and RCW 48.17.530(1)(1).