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THIS
CORNER

IIABNY to Sue NYSID Over Producer Compensation Disclosure Reg.

*Group Alone Sues
to Undo Rule*

**NYSID: "We are
confident in our
legal authority..."**

Agents and Brokers: Disclose and Report Out of State Actions!

It may not be surprising to hear that the New York State Insurance Department has taken disciplinary action against licensees that fail to properly remit premium monies to insurers or to individuals who act outside the scope of their licenses.

What may be surprising, however, is that 15 of the 30 disciplinary actions released in the first week of January 2010 involved a licensee's failure to disclose or failure to report information to the Department as required by the Producer Licensing Model Act. While some licensees failed to provide truthful responses to a question on a renewal application (such as a prior criminal conviction or a bankruptcy proceeding or an administrative proceeding), the most prevalent failure was to report within 30 days the action taking by another state insurance department. Such action typically included another insurance department's denial of a license application or the revocation of an insurance license. The insurance departments involved included the States of Wisconsin, Virginia, South Dakota, Alabama, California, Florida, among many others.

Notably, in a handful of the disciplinary actions just recently issued, the failure to report was not necessarily the outcome of another insurance department's ruling but the ruling of another regulatory agency. For instance, in one action, an agency failed to disclose on its renewal applications that it was the subject of financial proceedings by FINRA (the Financial Industry Regulatory Authority). In another action, a licensee failed to disclose fines imposed by the NASD (National Association of

Securities Dealers).

To avoid being the subject of a disciplinary action and being risk to fines or revocation of a license, agents and brokers

As another precaution, licensees should never delegate the task of completing a renewal application. That is, the individual licensee or the sublicensee/designated responsible person of an agency or brokerage should read each question carefully and respond accurately and truthfully to the questions posed rather than quickly marking "No" throughout an application.

should remember to notify the Superintendent within 30 days of any administrative action taken against them in any other state or by any other governmental agency. Criminal prosecution must also be timely reported (within 30 days of the initial pretrial hearing date). Even a mere change of address or a change in home state must be reported within 30 days. Licensees also have reporting requirements when it comes to termination of a producer or an insurance business relationship for cause.

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quickly marking "No" throughout an application. If a "Yes" is marked it should be supported with an explanation. Of course honest mistakes are made, but to



Sari Gabay-Rafiy

operate under the assumption that the New York State Insurance Department will never know about the action taken by the Commissioner of Insurance in Wisconsin, is misguided.

Finally, if you find yourself or your company the subject of an investigation, it is important to be responsive and cooperative. Ignoring letters or calls may only dig you into a deeper hole. In fact, in the January 2010 disciplinary actions that involved a failure to report, revocation appeared to be the more common penalty than a fine particularly where the licensee failed to respond to the Department's investigatory letters.^[A]

This article is for informational purposes only and is not intended to give legal advice. For more information, please contact the author gabay@gabaybowler.com or 212-941-5025.

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