WEST VIRGINIA CODE: §33-13C-7

§33-13C-7. Examination or investigation.

(a) (1) The commissioner may conduct an examination under this article of a licensee as often as he or she deems appropriate after considering such matters as consumer complaints, results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, report of independent certified public accountants and other relevant criteria as determined by the commissioner.

(2) For purposes of completing an examination of a licensee under this article, the commissioner may examine or investigate any person, or the business of any person, in so far as the examination or investigation is, in the sole discretion of the commissioner, necessary or material to the examination of the licensee.

(3) In lieu of an examination under this article of any foreign or alien licensee licensed in this state, the commissioner may, at the commissioner's discretion, accept an examination report on the licensee as prepared by the commissioner for the licensee's state of domicile or port-of-entry state; as far as practical, the examination of a foreign or alien licensee shall be made in cooperation with the insurance supervisory officials of other states in which the licensee transacts business.

(b) (1) A person required to be licensed by this article shall for five years retain copies of all records and documents related to the requirements of this article, including, but not limited to, proposed, offered or executed contracts, purchase agreements, underwriting documents, policy forms and applications from the date of the proposal, offer or execution of the contract or purchase agreement, whichever is later; and all checks, drafts or other evidence and documentation related to the payment, transfer, deposit or release of funds from the date of the transaction: Provided, That this subsection does not relieve a person of the obligation to produce these documents to the commissioner after the retention period has expired if the person has retained the documents.

(2) Records required to be retained by this section shall be legible and complete and may be retained in paper, photograph, microprocess, magnetic, mechanical or electronic media or by any process that accurately reproduces or forms a durable medium for the reproduction of a record.

(c) (1) Upon determining that an examination should be conducted, the commissioner shall issue an examination warrant appointing one or more examiners to perform the examination and instructing them as to the scope of the examination. In conducting the examination, the examiner shall observe those guidelines and procedures set forth in the Examiners Handbook adopted by the National Association of Insurance Commissioners (NAIC). The commissioner may also employ such other guidelines or procedures as the commissioner may deem appropriate.

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(2) Every licensee or person from whom information is sought, its officers, directors and agents shall provide to the examiners timely, convenient and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents, assets and computer or other recordings relating to the property, assets, business and affairs of the licensee being examined. The officers, directors, employees and agents of the licensee or person shall facilitate the examination and aid in the examination so far as it is in their power to do so. The refusal of a licensee, by its officers, directors, employees or agents, to submit to examination or to comply with any reasonable written request of the commissioner shall be grounds for suspension or refusal of, or nonrenewal of any license or authority held by the licensee to engage in the viatical settlement business or other business subject to the commissioner's jurisdiction. Any proceedings for suspension, revocation or refusal of any license or authority shall be conducted pursuant to section eleven, article two of this chapter.

(3) The commissioner shall have the power to issue subpoenas, to administer oaths and to examine under oath any person as to any matter pertinent to the examination. Upon the failure or refusal of a person to obey a subpoena, the commissioner may petition a court of competent jurisdiction and, upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order is punishable as contempt of court.

(4) When making an examination under this article, the commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants or other professionals and specialists as examiners, the reasonable cost of which shall be borne by the licensee that is the subject of the examination.

(5) Nothing contained in this article shall be construed to limit the commissioner's authority to terminate or suspend an examination in order to pursue other legal or regulatory action pursuant to the insurance laws of this state. Findings of fact and conclusions made pursuant to any examination shall be prima facie evidence in any legal or regulatory action.

(6) No later than sixty days following completion of the examination, the examiner in charge shall file with the commissioner a verified written report of examination under oath. Upon receipt of the verified report, the commissioner shall transmit the report to the licensee examined, together with a notice that shall afford the licensee examined a reasonable opportunity of not more than thirty days to make a written submission or rebuttal with respect to any matters contained in the examination report.

(7) In the event the commissioner determines that regulatory action is appropriate as a result of an examination, the commissioner may initiate any proceedings or actions provided by law.

(d) (1) Names and individual identification data for all viators is considered private and confidential information and shall not be disclosed by the commissioner unless required by law.

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(2) Except as otherwise provided in this article, all examination reports, working papers, recorded information, documents and copies thereof produced by, obtained by or disclosed to the commissioner or any other person in the course of an examination made under this article, or in the course of analysis or investigation by the commissioner of the financial condition or market conduct of a licensee is confidential by law and privileged, is not subject to the public disclosure provisions of article one, chapter twenty-nine-b of this code, is not subject to subpoena and is not subject to discovery or admissible in evidence in any private civil action. The commissioner is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as part of the commissioner's official duties.

(3) Documents, materials or other information, including, but not limited to, all working papers, and copies thereof, in the possession or control of the NAIC and its affiliates and subsidiaries is confidential by law and privileged, is not subject to subpoena, and is not subject to discovery or admissible in evidence in any private civil action if they are:

(A) Created, produced or obtained by or disclosed to the NAIC and its affiliates and subsidiaries in the course of assisting an examination made under this article, or assisting a commissioner in the analysis or investigation of the financial condition or market conduct of a licensee; or

(B) Disclosed to the NAIC and its affiliates and subsidiaries under subdivision (5) of this subsection by a commissioner.

(4) Neither the commissioner nor any person that received the documents, material or other information while acting under the authority of the commissioner, including the NAIC and its affiliates and subsidiaries, shall be permitted to testify in any private civil action concerning any confidential documents, materials or information subject to subdivision (1) of this subsection.

(5) In order to assist in the performance of the commissioner's duties, the commissioner:

(A) May share documents, materials or other information, including the confidential and privileged documents, materials or information subject to subdivision (1) of this subsection, with other state, federal and international regulatory agencies, with the NAIC and its affiliates and subsidiaries, and with state, federal and international law-enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material, communication or other information;

(B) May receive documents, materials, communications or information, including otherwise confidential and privileged documents, materials or information, from the NAIC and its affiliates and subsidiaries, and from regulatory and law-enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the jurisdiction that is the source of the document, material or information;

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and

(C) May enter into agreements governing sharing and use of information consistent with this subsection.

(6) No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in subdivision (5) of this subsection.

(7) A privilege established under the law of any state or jurisdiction that is substantially similar to the privilege established under this subsection shall be available and enforced in any proceeding in, and in any court of, this state.

(8) Nothing contained in this article shall prevent or be construed as prohibiting the commissioner from disclosing the content of an examination report, preliminary examination report or results, or any matter relating thereto, to the commissioner of any other state or country, or to law-enforcement officials of this or any other state or agency of the federal government at any time or to the NAIC, so long as such agency or office receiving the report or matters relating thereto agrees in writing to hold it confidential and in a manner consistent with this article.

(e) (1) An examiner may not be appointed by the commissioner if the examiner, either directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary interest in any person subject to examination under this article. This section shall not be construed to automatically preclude an examiner from being:

(A) A viator;

(B) An insured in a viaticated insurance policy; or

(C) A beneficiary in an insurance policy that is proposed to be viaticated.

(2) Notwithstanding the requirements of this clause, the commissioner may retain, from time to time, on an individual basis, qualified actuaries, certified public accountants or other similar individuals who are independently practicing their professions, even though these persons may, from time to time, be similarly employed or retained by persons subject to examination under this article.

(f) (1) No cause of action shall arise nor shall any liability be imposed against the commissioner, the commissioner's authorized representatives or any examiner appointed by the commissioner for any statements made or conduct performed in good faith while carrying out the provisions of this article.

(2) No cause of action shall arise, nor shall any liability be imposed against any person for the act of communicating or delivering information or data to the commissioner or the commissioner's authorized representative or examiner pursuant to an examination made

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under this article, if the act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive. This subdivision does not abrogate or modify in any way any common law or statutory privilege or immunity heretofore enjoyed by any person identified in subdivision (1) of this subsection.

(3) A person identified in subdivision (1) or (2) of this subsection shall be entitled to an award of attorney's fees and costs if he or she is the prevailing party in a civil cause of action for libel, slander or any other relevant tort arising out of activities in carrying out the provisions of this article and the party bringing the action was not substantially justified in doing so. For purposes of this section, a proceeding is "substantially justified" if it had a reasonable basis in law or fact at the time that it was initiated.

(g) The insurance fraud unit created in article forty-one of this chapter may investigate suspected violations of this article by persons engaged in the business of viatical settlements in the same manner as the fraud unit investigates suspected violators of those statutes set forth in subsection (b), section eight, article forty-one of this chapter.

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