

CHAPTER 17A

INSURANCE PRODUCER STANDARDS OF CONDUCT; MARKETING

Authority

N.J.S.A. 17:1-8.1, 17:1-15e and 17:22A-26 et seq.

Source and Effective Date

R.2005 d.237, effective June 21, 2005.
See: 37 N.J.R. 413(a), 37 N.J.R. 2691(c).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 17A, Insurance Producer Standards of Conduct; Marketing, expires on December 18, 2010. See: 42 N.J.R. 1470(a).

Chapter Historical Note

Chapter 17A, Insurance Producer and Limited Insurance Representative Standards of Conduct: Marketing, was adopted as R.1990 d.11, effective January 2, 1990. See: 21 N.J.R. 1317(a), 22 N.J.R. 30(b).

Petition for Rulemaking. See: 23 N.J.R. 3659(a).

Pursuant to Executive Order No. 66(1978), Chapter 17A, Insurance Producer and Limited Insurance Representative Standards of Conduct: Marketing, was readopted as R.1995 d.60, effective December 30, 1994. See: 26 N.J.R. 4307, 27 N.J.R. 562(a).

Pursuant to Executive Order No. 66(1978), Chapter 17A, Insurance Producer and Limited Insurance Representative Standards of Conduct: Marketing, was readopted as R.2000 d.44, effective December 30, 1999. See: 31 N.J.R. 3583(a), 32 N.J.R. 499(a).

Chapter 17A, Insurance Producer and Limited Insurance Representative Standards of Conduct; Marketing, was renamed Insurance Producer Standards of Conduct; Marketing; Subchapter 1, Activities for Which a Person Must Be Licensed as an Insurance Producer or Registered as a Limited Insurance Representative, was renamed Activities for Which a Person Must Be Licensed as an Insurance Producer; and Subchapter 3 Incorporation of Other Provisions of the New Jersey Administrative Code Applicable To Insurance Producers and Limited Insurance Representatives, was renamed Incorporation of Other Provisions of the New Jersey Administrative Code Applicable To Insurance Producers, by R.2002 d.354, effective November 4, 2002. See: 34 N.J.R. 2286(a), 34 N.J.R. 2459(b), 34 N.J.R. 3839(a).

Chapter 17A, Insurance Producer and Limited Insurance Representative Standards of Conduct; Marketing, was readopted as R.2005 d.237, effective June 21, 2005. As a part of R.2005 d.237, Chapter 17A, Insurance Producer and Limited Insurance Representative Standards of Conduct; Marketing, was renamed Insurance Producer Standards of Conduct; Marketing; and Subchapter 1, Activities for Which a Person Must Be Licensed as an Insurance Producer or Registered as a Limited Insurance Representative, was renamed Activities for Which a Person Must Be Licensed as an Insurance Producer, effective July 18, 2005. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. ACTIVITIES FOR WHICH A PERSON MUST BE LICENSED AS AN INSURANCE PRODUCER

11:17A-1.1 Purpose; scope

(a) The purpose of this subchapter is to implement the provisions of N.J.S.A. 17:22A-26 et seq. generally, and 17:22A-29 in particular, by identifying the insurance-related activities that require licensure as an insurance producer.

(b) This subchapter applies to all persons performing the functions of licensed insurance producers.

Amended by R.2002 d.354, effective November 4, 2002.
See: 34 N.J.R. 2286(a), 34 N.J.R. 2549(b), 34 N.J.R. 3839(a).

In (a), amended the N.J.S.A. references and deleted "or registration as a limited insurance representative" following "insurance producer".

11:17A-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

“Automobile” means a private passenger automobile of a private passenger or station wagon type that is owned or hired and is neither used as a public or livery conveyance for passengers nor rented to others with a driver; and a motor vehicle with a pickup body, a delivery sedan, a van, or a panel truck or a camper type vehicle used for recreational purposes owned by an individual or by husband and wife who are residents of the same household, not customarily used in the occupation, profession or business of the insured other than farming or ranching. An automobile owned by a farm family copartnership or corporation, which is principally garaged on a farm or ranch and otherwise meets the definitions contained in this section, shall be considered a private passenger automobile owned by two or more relatives resident in the same household.

“Clerical duties” means the administrative and underwriting tasks accomplished in the office and under the supervision of the insurer or licensed producer that are necessary to produce the insurance contract in accordance with the insurer’s or producer’s normal procedures and systems, including, but not limited to, the following:

1. Receiving requests for coverage for transmittal to a licensed insurance producer or for processing through an automated system developed and maintained under the supervision of an insurer or licensed insurance producer;
2. Mailing billings;
3. Scheduling appointments with insurance producers;
4. Office filing;
5. Marketing research or prospecting so long as no attempt is made to solicit or to discuss a specific insurance product or to encourage replacement of an existing policy;
6. Receiving and recording information from an applicant or policyholder and preparing for an insurance producer’s review and signature all binders, certificates, endorsements, identification cards or policies pursuant to instructions from the insurance producer;
7. Receiving and recording information from an applicant or policyholder and preparing an application for insurance pursuant to instructions from and for the review of an insurance producer;
8. Receiving and recording information from a policyholder or prospective policyholder to give to an insurance producer for his or her response, or transmitting information to a policyholder or prospective policyholder under the supervision of an insurance producer;

Example: An unlicensed sales representative in a car dealership collects information from a car buyer that is given to a licensee to complete a credit insurance transaction.

9. Receiving and recording an insured’s request concerning any additions or deletions to an existing policy and preparing the appropriate endorsements or processing the appropriate changes through an automated system developed and maintained under the supervision of an insurer or licensed insurance producer and notifying the insurance producer of the endorsements or changes;

Example: An unlicensed person may receive and process a request from an insured to delete an automobile on an existing policy and to add a replacement automobile, or may receive and process a request to delete physical damage coverage on a particular automobile, or receive and process a request for similar routine policy changes initiated by an insured. An unlicensed person may not, however, initiate a change by, for example, telephoning a life insurance policyholder and suggesting that the insured increase the face amount of the policy.

10. Opening mail;

11. Receiving premiums at the recorded place of business where the payment is being made on a binder, endorsement or existing policy;

12. Taking factual information relative to a claim;

13. Communicating with the policyholder or prospective policyholder in order to obtain factual information necessary for an insurance producer to complete a review;

Example: An unlicensed person may call an applicant to request the submission of additional documents.

14. Informing the insured as to his or her coverages as indicated in policy records;

15. Communicating with a prospective or existing insured for the purpose of auditing records or providing loss control on underwriting verifications and inspections;

16. Disseminating buyer’s guides, applications for coverage, coverage selection forms or other similar forms in response to a request from prospective or current policyholders;

Example: An unlicensed person may receive a request for an application and respond by mailing or giving an application for insurance and other related literature. The unlicensed person may not, however, initiate the conversation.

17. Disseminating information as to rates secured by reference to a published or printed list or computer data base of standard rates;

Example: An unlicensed person may respond to a specific request for the cost of a specific coverage from a rate manual published in print or in an electronic format. However, an unlicensed person may not provide advice or suggestions concerning the benefits or drawbacks of a particular coverage, deductible, limit, etc., in the course of disseminating this information;

18. As an underwriter employed by an insurer or by a licensed insurance producer, upon receipt of an application submitted by a licensed producer, requesting and reviewing information under paragraph 15 above, requesting and reviewing the results of a physical examination of a prospective insured named in a submitted application, requesting and reviewing information from persons other than the applicant, making a determination that the applicant meets the insurer's underwriting criteria, and mailing the policy to the policyholder or the producer.

Example: An unlicensed full-time salaried underwriter not compensated based on sales receives a non-bound life in-

surance application from a licensed producer. The underwriter requests that the applicant take a physical examination. Pursuant to authorizations in the application, the underwriter requests medical records from the applicant's physicians. The underwriter reviews the application, results of the physical examination and the medical records, and decides to issue the life insurance policy applied for. The underwriter mails the policy with a printed explanatory brochure to the applicant. All of these activities are permissible activities for the unlicensed underwriter; and

19. Providing information to and receiving and recording information from an applicant for ticket insurance for processing by a licensee where the unlicensed person is an employee of the licensee.

Example: An unlicensed counter person in a car rental agency may receive and record an applicant's request for personal effects coverage. The car rental company must be a licensee and the counter person must provide the customer with written information about the coverage.

"Commissioner" means the Commissioner of the Department of Banking and Insurance of the State of New Jersey.

"Completed written application" means a signed application that contains the minimum information necessary to rate and underwrite the policy, is accompanied by a completed coverage selection form as provided at N.J.A.C. 11:3-15.6 and, if requested, a copy of the applicant's driver's license, a copy of the motor vehicle registration for the principal vehicle to be insured, one additional proof of New Jersey residency and an acknowledgment of requirement for insurance inspection form where physical damage is requested.

"Declination," "denied" or "denial" means:

1. Refusal by an insurance producer to submit an application on behalf of an applicant to any of the insurers represented by the producer;
2. Refusal by an insurer to issue an automobile insurance policy to an applicant upon receipt of an application for automobile insurance;
3. The offer of automobile insurance coverage with less favorable terms or conditions than those requested by a person, including the refusal to make requested changes to an existing policy that are available to other insureds with that insurer;
4. The refusal by an insurer or producer to provide, upon the request of an applicant, an application form or other means of making an application or request for automobile insurance coverage;
5. The refusal by an insurer to renew a policy of automobile insurance in accordance with its acceptance criteria;
6. The cancellation of an automobile insurance policy by the insurer pursuant to N.J.S.A. 17:29C-7 for any reason other than nonpayment of premium; or
7. Failure of an insurer to either bind coverage or issue a written denial of coverage to an applicant, or if requested to notify the applicant whether coverage will be provided or denied, within five business days from the date a completed written application is received. When an application is transmitted to an insurer by first class mail, there is a rebuttable presumption that the application was received by the insurer two calendar days after mailing

when the destination is in New Jersey or within a 300 mile radius of the place of mailing, or three calendar days when the destination is outside a 300 mile radius of the place of mailing, as evidenced by a proof of mailing or postmark.

"Department" means the Department of Banking and Insurance.

"Financial institution" means any State or Federal banking institution, bank holding company, credit union, savings and loan association, finance company, mortgage loan company, or any other institution, association, partnership, company corporation, individual or individuals whose principal business is the lending of money or the extension of credit.

"Inducement" means money or any favor, advantage, object, valuable consideration or anything other than money which has a cost of or a redeemable value greater than \$25.00.

"Insurance contract" means a contract, policy, application, binder or commitment, where applicable, of life insurance, health insurance, indemnity, property and casualty, fidelity, surety, guaranty, title insurance, a commitment for title insurance or an annuity.

"Insurance producer" means any person required to be licensed under the laws of this State to sell, solicit or negotiate insurance.

"Insurer" means any company that underwrites or issues an insurance policy or contract including fraternal benefit societies as defined at N.J.S.A. 17:44B-1 et seq., risk retention groups and purchasing groups as defined at 15 U.S.C. § 3901 and N.J.S.A. 17:47A-1 et seq., limited assignment distribution (LAD) carriers as defined at N.J.A.C. 11:3-2.2 and organizations and/or groups formed under N.J.A.C. 11:2-36.

"Negotiate" or "negotiation" means the act of conferring directly with, or offering advice directly to a purchaser or prospective purchaser of a particular contract or policy of insurance concerning any of the substantive benefits, terms or conditions of the contract or policy, provided the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers, but does not include clerical duties carried out under the supervision and control of an insurer or licensed insurance producer, or procedures relating to loss control, inspection, or the processing, adjusting, investigating or settling of a claim on an existing insurance contract.

"Person" means any individual, corporation, partnership or legal entity.

"Personal private passenger automobile insurance" or "automobile insurance" means direct insurance on private passenger automobiles issued by an insurer in accordance with a personal lines rating system filed and approved pursuant to N.J.S.A. 17:29A-1 et seq.

“Professional employer organization (PEO)” means a sole proprietorship, partnership, corporation or other business entity, which would constitute a PEO or employee leasing company as defined in N.J.S.A. 34:8-67.

“Rebate” means the return or promise to return of any monetary sum, or discount, abatement, credit or reduction in premium other than that plainly expressed in the insurance contract.

“Solicit” or “solicitation” means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular insurer, but does not include clerical duties carried out under the supervision and control of an insurer or licensed insurance producer, or procedures relating to loss control, inspection, or the processing, adjusting, investigating or settling of a claim on an existing insurance contract.

“Transmission” means any form of mailing including, but not limited to, third class mail, certified mail, any overnight delivery or express delivery, hand delivery and any wire transmission including, but not limited to, facsimile transmission or computer modem.

Amended by R.1992 d.192, effective April 20, 1992.

See: 23 N.J.R. 546(a), 24 N.J.R. 1510(a).

Definitions added for automobile, declination, eligible person and personal private passenger automobile insurance.

Emergency Amendment R.1993 d.135, effective March 1, 1993 (operative March 8, 1993) (expired April 30, 1993.)

See: 25 N.J.R. 1290(a).

Definition for completed written application added; item 7 added to definition of declination; definition for transmission added.

Amended by R.1993 d.199, effective May 3, 1993.

See: 25 N.J.R. 446(a), 25 N.J.R. 1878(a).

Added definition of clerical duties, and exceptions of such duties to definitions of effectuate, negotiate and solicit; definition of insurance contract and insurer amended.

Adopted Concurrent Proposal, R.1993 d.238, effective April 30, 1993.

See: 25 N.J.R. 1290(a), 25 N.J.R. 2479(a).

Petition for Rulemaking.

See: 25 N.J.R. 4523(b).

Amended by R.1994 d.598, effective December 5, 1994.

See: 26 N.J.R. 3591(a), 26 N.J.R. 4777(a).

Amended by R.1995 d.60, effective February 6, 1995.

See: 26 N.J.R. 4307(a), 27 N.J.R. 562(a).

Amended by R.2000 d.44, effective February 7, 2000.

See: 31 N.J.R. 3583(a), 32 N.J.R. 499(a).

Substituted a reference to this chapter for a reference to this subchapter in the introductory paragraph; and inserted “Department”, “Financial institution”, “Inducement” and “Rebate”.

Amended by R.2002 d.354, effective November 4, 2002.

See: 34 N.J.R. 2286(a), 34 N.J.R. 2549(b), 34 N.J.R. 3839(a).

In “Declination,” “denied” or “denial”, substituted “producer” for “agent” throughout; deleted “Effectuate” or “effectuation” and “Limited insurance representative”; rewrote “Insurance producer”, “Negotiate” or “negotiation” and “Solicit” or “solicitation”.

Amended by R.2004 d.14, effective January 5, 2004.

See: 35 N.J.R. 4169(a), 36 N.J.R. 195(b).

In “Clerical duties”, amended 8 and added 19.

Amended by R.2004 d.184, effective May 3, 2004.

See: 35 N.J.R. 4170(a), 36 N.J.R. 2198(a).

Added “Professional employer organization (PEO)”.

Amended by R.2005 d.237, effective July 18, 2005.

See: 37 N.J.R. 413(a), 37 N.J.R. 2691(c).

Substituted “Commissioner” for “Commission”; in “Inducement”, substituted “a cost of” for “an intrinsic value” and “\$25.00” for “\$20.00”; rewrote “Insurer”.

Amended by R.2008 d.380, effective December 15, 2008 (operative January 1, 2009).

See: 40 N.J.R. 3572(a), 40 N.J.R. 6970(b).

In definition “Completed written application”, deleted “as set forth at N.J.A.C. 11:3-44.3(a) to determine whether the applicant is an eligible person,” following “information necessary”; in 3 of definition “Declination,” “denied” or “denial”, deleted “, or the offer to insure at a rate applicable to other than an eligible person” following “insurer”; in rewrote 5; and in 7, deleted “that includes the information in N.J.A.C. 11:3-44.3(a)” following “received”; and deleted definition “Eligible person”.

11:17A-1.3 Who must be licensed; exceptions

(a) Except as provided in N.J.A.C. 11:17B-2.1(b) or (e), no person shall act as an insurance producer or maintain or operate any office in this State for the transaction of the business of an insurance producer, or receive any commission, brokerage fee, compensation or other consideration for services rendered as an insurance producer, without first obtaining a license from the Commissioner granting authority for the kind of insurance transacted.

(b) Unless otherwise specifically provided by N.J.S.A. 17:22A-26 et seq., any person who solicits, negotiates or sells contracts of insurance in New Jersey shall be considered to be transacting the business of insurance in New Jersey so as to require licensure as an insurance producer.

(c) Engaging in a single act or transaction of the business of an insurance producer, or holding oneself out to the public or an insurance producer as being so engaged, shall be sufficient proof of engaging in the business of an insurance producer as to require licensure pursuant to N.J.S.A. 17:22A-26 et seq.

(d) No licensed insurance producer shall permit or allow any unlicensed person to transact the business of an insurance producer.

(e) Officers or employees of insurers authorized to do business in this State and officers or employees of licensed insurance producers, who solicit, negotiate or sell insurance by communicating directly with the public whether in person or by mail, fax, computer or telephone, in the name of and on behalf of the insurer or the licensed insurance producer, for compensation of any type, shall be licensed as an insurance producer. The requirements of this subsection shall not apply to officers or employees whose participation in the solicitation, negotiation or sale of insurance contracts is in a manner not requiring a license as an insurance producer as described in N.J.S.A. 17:22A-30(b).

Amended by R.1991 d.52, effective February 4, 1991.

See: 22 N.J.R. 3444(a), 23 N.J.R. 310(a).

In (e): revised date to “January 1, 1992.”

Amended by R.1992 d.44, effective January 21, 1992.

See: 23 N.J.R. 1912(a), 24 N.J.R. 287(c).

Application of (e) specified.

Amended by R.1993 d.49, effective January 19, 1993.
See: 24 N.J.R. 3220(a), 25 N.J.R. 313(a).

Licensure or registration required by (c) to be secured by May 1, 1993.

Amended by R.1993 d.199, effective May 3, 1993.
See: 25 N.J.R. 446(a), 25 N.J.R. 1878(a).

Text at (e) amended to include officers and employees of insurance producers; and to clarify that direct contact with the public requires license.

Amended by R.1995 d.60, effective February 6, 1995.

See: 26 N.J.R. 4307(a), 27 N.J.R. 562(a).

Amended by R.2002 d.354, effective November 4, 2002.

See: 34 N.J.R. 2286(a), 34 N.J.R. 2549(b), 34 N.J.R. 3839(a).

In (a), inserted "Except as provided in N.J.A.C. 11:17B-2.1(b) or (e)," preceding "No person shall act"; in (b) and (c), amended the N.J.S.A. references and substituted "sells" for "effects" preceding "contracts of insurance" in (b); rewrote (e).

Case Notes

License revoked; unlicensed persons allowed to solicit coverage. *Fortunato v. EVA Insurance & Accounting, Inc.*, 93 N.J.A.R.2d (INS) 27.

11:17A-1.4 Selling, soliciting or negotiating an insurance contract

(a) No person shall solicit, negotiate or sell an insurance contract in New Jersey unless he or she is a licensed insurance producer.

(b) Selling, soliciting or negotiating an insurance contract includes, but is not limited to, the following activities:

1. Discussing the effect of age, health or other risk-related conditions of the prospective policyholder;
2. Urging or advising any prospective purchaser to buy any particular policy or to insure with any particular company;
3. Initiating sales over the telephone or otherwise;
4. Completing or signing applications for insurance if the person is other than the applicant's authorized representative;
5. Collecting premiums in person at other than a recorded place of business;
6. Making or proposing to make an insurance contract;
7. Disseminating information as to coverages in general or for any particular policy, except that this shall not prohibit the dissemination of buyer's guides or applications for coverage in response to requests from prospective policyholders;
8. Disseminating information as to rates in general or for any particular policy where the rate cannot be secured by referring to a published or printed list of standard rates;
9. Initiating an inquiry as to the terms of existing coverage, except exclusively in the course of clerical duties;
10. Discussing or describing the coverages or terms of a proposed contract of insurance with a prospective policyholder, including counseling as to which coverages to buy;

Example: If an insured or prospective insured requests advice in any communication with an unlicensed employee, the response must be made by a licensed producer.

11. Recommending or independently initiating additions or deletions to an insured's policy;

12. Signing binders, endorsements and insurance policies;

13. Authorizing the issuance or delivery of certificates of insurance, endorsements, binders or insurance policies or insurance identification cards; and

14. Responding to a policyholder's request for advice or counsel regarding policy provisions or coverage.

Example: In the course of requesting an application form or a change to an existing policy, if a policyholder or prospective policyholder, while speaking to an unlicensed person, requests an opinion about the terms of the proposed insurance contract or the proposed change to the existing contract, the response must be made by a licensed producer.

(c) No insurance producer shall negotiate or solicit in New Jersey any insurance contract which has not first been filed in New Jersey where such contract is required to be filed.

(d) Except as provided in (d)1 below, no professional employer organization or its employees, principals and/or agents shall engage in any activities listed in (b) above at any time, including while negotiating and/or conducting business with any client company or prospective client company, unless the activity is conducted or performed by a properly licensed insurance producer.

1. Professional employer organizations whose only insurance related activity when enrolling new members is either providing information on the single insurance plan available through the PEO, distributing literature on multiple insurance plans available or performing only those functions described in N.J.S.A. 17:22A-30b(2) shall not be deemed to be engaged in activity requiring licensure pursuant to (b)7, 8 or 10 above.

Amended by R.1993 d.199, effective May 3, 1993.

See: 25 N.J.R. 446(a), 25 N.J.R. 1878(a).

Text at (b) amended to define activities further and to add examples.

Amended by R.2002 d.354, effective November 4, 2002.

See: 34 N.J.R. 2286(a), 34 N.J.R. 2549(b), 34 N.J.R. 3839(a).

In (a), substituted "sell" for "effect" and deleted "or a registered limited insurance representative" following "insurance producer"; in (b), substituted "Selling, soliciting or negotiating" for "Solicitation, negotiation and effectuation of" in the introductory paragraph and rewrote 9; in (c), deleted "or limited insurance representative" following "insurance producer".

Amended by R.2004 d.184, effective May 3, 2004.

See: 35 N.J.R. 4170(a), 36 N.J.R. 2198(a).

Added (d).

11:17A-1.5 Activities for which licensure not required

Office employees who perform strictly clerical duties under the supervision and control of an insurer or licensed

producer shall not be required to be licensed as an insurance producer.

Amended by R.1993 d.199, effective May 3, 1993.

See: 25 N.J.R. 446(a), 25 N.J.R. 1878(a).

Activities defined further; examples added; (a)15 through 17 added. Administrative Correction.

See: 25 N.J.R. 4179(b).

11:17A-1.6 Duty to have insurance producer at each place of business

(a) Each place of business maintained by an insurance producer for the purpose of transacting the business of insurance shall be under the direct supervision of an insurance producer.

(b) Any insurance producer who has established one or more places of business for the purpose of transacting the business of insurance shall assign at least one separate insurance producer to each location and shall register as a branch office in accordance with N.J.A.C. 11:17-2.8. Any insurance business conducted at a branch office shall be the responsibility of both the licensed producer assigned to that office and the insurance producer that registered the branch office in accordance with N.J.A.C. 11:17-2.8.

(c) Licensed partners, officers and directors, and all owners with an ownership interest of five percent or more in the organization shall be held responsible for all insurance related conduct of the organization licensee, any of its branch offices, its other licensed officers or partners, and its employees.

Amended by R.2000 d.44, effective February 7, 2000.

See: 31 N.J.R. 3583(a), 32 N.J.R. 499(a).

In (b), added a second sentence; and rewrote (c).

Amended by R.2002 d.354, effective November 4, 2002.

See: 34 N.J.R. 2286(a), 34 N.J.R. 2549(b), 34 N.J.R. 3839(a).

In (b), substituted "N.J.A.C. 11:17-2.8" for "N.J.S.A. 17:22A-8" in the second sentence; rewrote (c).

Case Notes

Partial Summary Decision (2006 N.J. AGEN LEXIS 552) adopted, which concluded that the president and partial owner of the insurance producer at issue was responsible for the conduct of the business of the company in accordance with N.J.A.C. 11:17A-4.10 and N.J.A.C. 11:17A-1.6(c), no matter who in the company may have actually failed to transmit premiums to insurers, return premiums to insureds, and obtain insurance coverage for its customers, in violation of N.J.A.C. 11:17C-2.2(a) and (b); by violating these insurance remittance laws of New Jersey, the licensee was also in violation of N.J.S.A. 17:22A-40(a)(2). *Bakke v. Prime Ins. Syndicate*, OAL Dkt. No. BKI 1168-05, 2006 N.J. AGEN LEXIS 509, Final Decision (May 8, 2006).

Because an agency is not a natural person, it is not possible for an agency to have the responsibility for an illegal act attributed to it except through its vicarious liability for the act of a natural person. Where an insurance agency was the licensee in whose name and under whose authority the agent acted when engaging in fraudulent activities, the agency was directly responsible for those violations. *Bakke v. Carlos Goncalves & Assocs., Inc.*, OAL Dkt. No. BKI 3301-05, 2006 N.J. AGEN LEXIS 144, Final Decision (February 15, 2006).

11:17A-1.7 Personal private passenger automobile insurance solicitation

(a) An insurance agent, or an insurance broker who has a brokerage relationship with an insurer, when soliciting personal private passenger automobile insurance, shall:

1. Upon request, submit an application for automobile insurance to the insurer selected by the applicant.

i. Where a producer who, pursuant to his or her agreement with an insurer, does not have authority to bind coverage immediately, receives a completed written application, the producer shall promptly transmit the application to the insurer. Nothing in this section shall be construed to permit an insurer to rescind any binding authority previously granted to its producers.

ii. Producers that transmit applications to insurers for underwriting review shall retain proof of such transmissions in order to memorialize the date upon which transmission occurred. Such proof may be in the form of:

(1) An official receipt of mailing which includes the applicant's name thereon;

(2) A copy of a facsimile transmission which contains the applicant's name and the date of transmission; or

(3) Any other manner from which proof and date of mailing can be verified;

2. Within 10 working days after receiving a declination (see N.J.A.C. 11:3-33) from an insurer to which a written application has been submitted, so advise the applicant in writing, unless the written declination was sent by the insurer to the applicant or the insured;

3. Where no written application has been made prior to declination, the agent or broker shall, if so requested by the applicant within 90 days from the date of denial, provide the applicant with a written explanation of the declination within 10 working days of the request. Such communication shall, when applicable, include the reasons why the coverage offered is with less favorable terms or conditions than those requested; and

4. Not bind coverage for automobile physical damage perils prior to inspection of the automobile by the insurer when the insurer requires such inspection pursuant to the provisions of N.J.A.C. 11:3-36.

(b) For the purpose of this section, the Commissioner may impose a civil penalty in an amount of up to \$2,000 for the first violation and up to \$5,000 for the second and each subsequent violation and any other penalty provided by law.

New Rule, R.1992 d.189, effective April 20, 1992.

See: 23 N.J.R. 3199(a), 24 N.J.R. 1510(a).

Section was "Penalties."

Emergency Amendment R.1993 d.135, effective March 1, 1993.
(operative March 8, 1993) (expires April 30, 1993.)

See: 25 N.J.R. 1290(a).

Binder requirements added to (a)3.

Adopted Concurrent Proposal, R.1993 d.238, effective April 30, 1993.

See: 25 N.J.R. 1290(a), 25 N.J.R. 2479(a).

Amended by R.1994 d.598, effective December 5, 1994.

See: 26 N.J.R. 3591(a), 26 N.J.R. 4777(a).

Amended by R.2000 d.44, effective February 7, 2000.

See: 31 N.J.R. 3583(a), 32 N.J.R. 499(a).

Amended by R.2008 d.380, effective December 15, 2008 (operative January 1, 2009).

See: 40 N.J.R. 3572(a), 40 N.J.R. 6970(b).

Rewrote (a).

11:17A-1.8 Penalties

(a) The Commissioner shall impose penalties for violations of this subchapter in accordance with the provisions of N.J.S.A. 17:22A-26 et seq. and any other applicable law.

(b) For the purpose of determining the existence of a violation and assessing a penalty under this subchapter, a separate violation shall be deemed to exist, and a separate penalty therefor shall be assessed, for each violation of the provisions of this subchapter.

Recodified from 1.7 by R.1992 d.192, effective April 20, 1992.

See: 23 N.J.R. 546(a), 24 N.J.R. 1510(a).

Section was "Severability."

Amended by R.2002 d.354, effective November 4, 2002.

See: 34 N.J.R. 2286(a), 34 N.J.R. 2549(b), 34 N.J.R. 3839(a).

In (a), amended the N.J.S.A. reference.

Case Notes

Licensee responsible for any submission of false applications by employee. *Fortunato v. Benner*, 92 N.J.A.R.2d (INS) 73.

Insurance producer license revoked for consumer fraud and other misconduct. *Fortunato v. Conte*, 92 N.J.A.R.2d (INS) 17.

11:17A-1.9 Severability

If any provision of this subchapter or the application thereof to any person or circumstance is held invalid, the remainder of the subchapter and the application of such provision to other persons or circumstances shall not be affected thereby.

Recodified from 1.8 by R.1992 d.192, effective April 20, 1992.

See: 23 N.J.R. 546(a), 24 N.J.R. 1510(a).

SUBCHAPTER 2. UNFAIR TRADE PRACTICES

11:17A-2.1 Purpose; scope

(a) This subchapter implements the provisions of N.J.S.A. 17:29A-15, 17:29B-4 and 17B:30-13 and 15 by prohibiting insurance producers from engaging in certain practices in connection with the business of insurance.

(b) This subchapter applies to all insurance producers.

Amended by R.2002 d.354, effective November 4, 2002.

See: 34 N.J.R. 2286(a), 34 N.J.R. 2549(b), 34 N.J.R. 3839(a).

Deleted references to limited insurance representatives throughout.

11:17A-2.2 (Reserved)

Amended by R.2000 d.17, effective January 3, 2000.

See: 31 N.J.R. 2859(a), 32 N.J.R. 60(b).

In "Inducement", substituted a reference to \$20.00 for a reference to \$10.00.

Repealed by R.2000 d.44, February 7, 2000.

See: 31 N.J.R. 3583(a), 32 N.J.R. 499(a).

Section was "Definitions".

11:17A-2.3 Rebates and inducements; prohibited practices

(a) No insurance producer shall offer, make or give, or permit to be offered, made or given, to any person directly or indirectly, an inducement to purchase insurance other than that plainly expressed in the insurance contract.

(b) No insurance producer shall offer, pay or give, or permit to be offered, paid or given, to any person, directly or indirectly, any rebate of premiums payable on a contract of insurance, other than that plainly expressed in the contract or provided for in ratings systems filed by or on behalf of the insurer writing the contract and approved by the Commissioner.

(c) No insurance producer shall offer, pay or give, or permit to be offered, paid or given, to any person, directly or indirectly, anything of value in return for that person's agreement not to purchase insurance from another insurance producer or insurer.

(d) No insurance producer shall offer, pay or give, or permit to be offered, paid or given, to any person, directly or indirectly, anything of value as compensation for being unable to offer a comparable or better insurance program at less cost.

(e) The provisions of this section shall apply whether or not a contract of insurance is ultimately effected.

(f) An offer by an insurer or insurance producer to make a contribution to a charity that is a qualified organization under the guidelines of the Internal Revenue Service, a non-profit corporation, or to the State of New Jersey or any political subdivision thereof, or to any state government or political subdivision thereof, upon a consumer, other than the charity, non-profit corporation, or governmental entity itself, agreeing to purchase an insurance product shall not be deemed to be an inducement or a rebate prohibited by this section, provided that:

1. No pecuniary benefit is obtained by the insurer or producer, other than the income tax benefit of such contribution;

2. No income tax benefits are passed through to the consumer by the insurer or producer making the contribution, and the consumer does not receive the contribution

and has no direct or indirect interest in the recipient of the contribution;

3. The amount of premium or commission to be charged is not altered as a result of the contribution;

4. Records of all such offers and contributions made are maintained for at least five years in a manner set forth in N.J.A.C. 11:17C-2.6, and are available to the Department for review and inspection upon request; and

5. The provisions of this subsection shall not apply to insurers authorized to transact title insurance and to insurance producers transacting title insurance business.

Amended by R.2008 d.195, effective July 21, 2008.

See: 40 N.J.R. 1063(a), 40 N.J.R. 4327(c).

Added (f).

Amended by R.2010 d.116, effective June 21, 2010.

See: 41 N.J.R. 4403(a), 42 N.J.R. 1209(b).

In (f)3, deleted "and" from the end; in (f)4, substituted "; and" for a period at the end; and added (f)5.

11:17A-2.4 Rebates and inducements; determination of value

(a) For the purpose of determining the value of any item pursuant to N.J.A.C. 11:17A-2.3, an insurance producer shall retain the original invoice for such item for five years beyond the later of the date the offer is discontinued or the date the last item is given.

(b) The value of any favor, advantage, valuable consideration or any other item or service shall be determined by the Commissioner or his or her designee.

Amended by R.2005 d.237, effective July 18, 2005.

See: 37 N.J.R. 413(a), 37 N.J.R. 2691(c).

In (b), substituted "Commissioner" for "Commission" preceding "or his or her designee".

11:17A-2.5 Tie-ins; coercion

(a) No financial institution licensed as an insurance producer shall, as a condition precedent, concurrent or subsequent to the lending of money or the extension of credit, or the renewal of the loan or extension of credit, require that the borrower acquire, finance or negotiate a policy or contract of insurance through any particular insurer or insurance producer, or cancel insurance with another insurance producer or insurer.

1. A financial institution licensed as an insurance producer shall accept the insurance policy provided by a borrower unless a reasonable basis exists to disapprove the insurance policy. For the purpose of this paragraph, disapproval shall be deemed unreasonable if it is not based solely on reasonable standards as determined by the Com-

missioner, uniformly applied, relating to the extent of coverage required and the financial soundness and services of an insurer. Such standards shall not discriminate against any particular type of insurer, nor shall such standards call for the disapproval of an insurance policy because such policy contains coverage in addition to that required. If a financial institution rejects the insurance furnished by the borrower, it shall provide the borrower with a clear and complete written statement of reasons for the rejection.

2. Pursuant to and consistent with (a) and (a)1 above, all financial institutions licensed as insurance producers shall issue a written disclosure to prospective insureds which shall inform them of their right to acquire insurance coverage from and through sources independent of the financial institution and its subsidiaries when such insurance coverage is required to secure a loan, credit or mortgage, or any renewal thereof. The written disclosure required by this paragraph shall be worded as follows, and printed in a type size not less than 10 point type, and shall be maintained by the insurance producer for at least five years. A copy of this disclosure shall be given to the borrower at the time the issue of insurance first arises.

DISCLOSURE NOTICE

The Insurance Laws of New Jersey provide that the lender may not require the borrower to take insurance through any particular insurer or insurance producer (for example, agent or broker).

The borrower has the right to have the insurance placed with or through an insurance producer and insurer of his or her choice, provided that they meet the reasonable requirements of the lender. Subject to the rules adopted by the Commissioner, the lender has the right to designate reasonable requirements as to the insurer and the insurance producer and as to the adequacy of the coverage. The lender cannot require the borrower to cancel insurance with another insurance producer and insurer unless the continuation of such coverage and relationship would be unreasonable within the meaning of this notice and N.J.A.C. 11:17A-2.5.

I have read the foregoing statement and understand my rights and privileges and those of the lender relative to the placing of insurance.

I have selected _____ (insert name) as the Insurance Company/Agency/Insurance Producer to provide the required _____ (insert type) insurance.

Name of Borrower

Name of Borrower

Date

(b) No financial institution licensed as an insurance producer shall require, directly or indirectly, that any borrower, mortgagor, purchaser, insurer or other insurance producer pay a separate charge in connection with the handling of any insurance policy required as security for a loan or the extension of credit, or pay a separate charge to substitute the insurance policy of one insurer for that of another.

(c) No financial institution licensed as an insurance producer shall require any procedure or condition of an insurer or insurance producer not customarily required of insurers or insurance producer that are affiliated or connected with the financial institution.

(d) No insurance producer shall engage in any conduct which reasonably could result in or results in:

1. Leading a person to believe that his or her creditworthiness, or that the extension of credit, is conditioned

upon the purchase of insurance through a particular insurance producer or insurer; or

2. An unlicensed financial institution either soliciting, negotiating, or selling insurance business acting on behalf of the insurance producer.

(e) No insurance producer shall require an applicant or policyholder, or a member of the applicant's or policyholder's family, to purchase from him or her a collateral policy of insurance as a condition precedent to securing or renewing a policy of insurance. Nothing in this subsection shall prevent an insurance producer from requiring the purchase of a collateral insurance policy from a source other than the insurance producer, including a person or entity with whom he or she is associated, if such a condition precedent is based upon appropriate underwriting guidelines of the insurer.

(f) No insurance producer engaged in a business other than the business of insurance shall engage in any conduct which reasonably could result in or which results in coercing an applicant or policyholder into purchasing insurance as a condition precedent, concurrent or subsequent to securing any other good or service.

(g) No insurance producer shall restrict the sale or issuance of an insurance policy, or participate in the restriction of the sale or issuance of an insurance policy, to persons who enter into, or agree to enter into, premium financing agreements with any particular premium finance service company.

(h) No insurance producer acting as a motor club representative or who receives any compensation, directly or indirectly, for or on account of the sale of a motor club service contract, shall require the purchase of a motor club contract as a condition to securing an insurance contract and/or premium finance agreement.

Amended by R.2000 d.44, effective February 7, 2000.

See: 31 N.J.R. 3583(a), 32 N.J.R. 499(a).

Amended by R.2002 d.354, effective November 4, 2002.

See: 34 N.J.R. 2286(a), 34 N.J.R. 2549(b), 34 N.J.R. 3839(a).

In (a)2, inserted "or her" preceding "choice," in the Disclosure Notice; in (d)2, substituted "selling" for "effecting" preceding "insurance business"; deleted references to limited insurance representatives throughout.

11:17A-2.6 Identification of insurance producer

(a) An insurance producer who solicits insurance shall be required to identify the following information to the person he or she is soliciting prior to commencing his or her solicitation:

1. His or her name as it appears on his or her insurance producer license;
2. The name of the insurer, if known, or insurance producer, that he or she is representing; and
3. The nature of the relationship between the insurance producer and the insurer or insurance producer being represented.

(b) In addition to (a)1 through 3 above, an insurance producer shall maintain his or her license at the business address on file with the Department and shall display the license to an insured or prospective insured upon their request.

11:17A-2.7 Unfair discrimination

No insurance producer shall refuse to take an application from a policyholder or prospective policyholder for any reason based in whole or in part upon the race, color, creed, religion, sex, marital status or physical impairments of an applicant or policyholder, or for any arbitrary, capricious, or unfairly discriminatory reason, or for any reason which is contrary to Federal or State law. Nothing in this section shall prohibit an insurance producer from refusing to submit an application to an insurer where there exists a contractual arrangement with an insurer to perform underwriting pursuant to established and legally permissible written underwriting guidelines and the refusal is based on these guidelines.

Amended by R.2002 d.354, effective November 4, 2002.

See: 34 N.J.R. 2286(a), 34 N.J.R. 2549(b), 34 N.J.R. 3839(a).

Deleted "or limited insurance representative" following "No insurance producer".

11:17A-2.8 "Twisting" prohibited

No insurance producer shall make any misleading representations or incomplete or fraudulent comparison of any insurance policies or annuity contracts or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, or convert any insurance policy or annuity contract, or to take out a policy of insurance or annuity contract with another insurer.

Amended by R.2002 d.354, effective November 4, 2002.

See: 34 N.J.R. 2286(a), 34 N.J.R. 2549(b), 34 N.J.R. 3839(a).

Deleted "or limited insurance representative" following "No insurance producer".

11:17A-2.9 Notice to purchasers of self-storage personal property insurance

(a) Insurance producers that market self-storage personal property insurance as defined in N.J.A.C. 11:17-1.2 shall provide potential purchasers with written notice:

1. That the renter's or lessee's homeowner's, renter's or business insurance policy may provide coverage for the loss or damage to property located on the self-storage premises and that the purchase of such insurance is not required under the lease terms between the self-storage facility and the renter or lessee; and
2. That the coverage may be cancelled within 30 days and a full refund made to the purchaser upon written notice to the producer who sold the self-storage insurance contract or the insurer.

New Rule, R.1997 d.278, effective July 7, 1997.

See: 28 N.J.R. 4707(a), 29 N.J.R. 2853(a).

Former section recodified to N.J.A.C. 11:17A-2.10.

Amended by R.2002 d.354, effective November 4, 2002.

See: 34 N.J.R. 2286(a), 34 N.J.R. 2549(b), 34 N.J.R. 3839(a).

In (a), substituted "Insurance producers" for "Limited insurance representatives" in the introductory paragraph and substituted "the producer who sold the self-storage insurance contract" for "either the limited insurance representative" in 2.

11:17A-2.10 Penalty

(a) The Commissioner shall impose penalties for violations of this subchapter in accordance with the provisions of N.J.S.A. 17B:30-1 et seq., 17:29B-1 et seq. and 17:22A-26 et seq.

(b) For the purpose of determining the existence of a violation and assessing a penalty under this subchapter, a separate violation shall be deemed to exist and a separate penalty therefore shall be assessed for each violation of the provisions of this subchapter.

Recodified from 11:17A-2.9 by R.1997 d.278, effective July 7, 1997.

See: 28 N.J.R. 4707(a), 29 N.J.R. 2853(a).

Former section recodified to N.J.A.C. 11:17A-2.11

Amended by R.2002 d.354, effective November 4, 2002.

See: 34 N.J.R. 2286(a), 34 N.J.R. 2549(b), 34 N.J.R. 3839(a).

In (a), amended the final N.J.S.A. reference.

11:17A-2.11 Severability

If any provision of this subchapter or the application thereof to any person or circumstance is held invalid, the remainder of the subchapter and the application of such provision to other persons or circumstances shall not be affected thereby.

Recodified from 11:17A-2.10 by R.1997 d.278, effective July 7, 1997.
See: 28 N.J.R. 4707(a), 29 N.J.R. 2853(a).

SUBCHAPTER 3. INCORPORATION OF OTHER
PROVISIONS OF THE NEW JERSEY
ADMINISTRATIVE CODE APPLICABLE TO
INSURANCE PRODUCERS

11:17A-3.1 Incorporation of other rules

(a) The following rules are herein incorporated by reference to the extent that they regulate the conduct of insurance producers:

1. N.J.A.C. 11:2-12, concerning mass marketing of property and liability insurance;
2. N.J.A.C. 11:4-11, concerning life insurance solicitation;
3. N.J.A.C. 11:4-17, concerning health insurance solicitation;
4. N.J.A.C. 11:4-2, concerning life insurance replacement;
5. N.J.A.C. 11:2-11 and 11:2-23, concerning life and health insurance advertising; and
6. N.J.A.C. 11:2-17, concerning unfair claims settlement practices.

Amended by R.2002 d.354, effective November 4, 2002.

See: 34 N.J.R. 2286(a), 34 N.J.R. 2549(b), 34 N.J.R. 3839(a).

In (a), deleted "and limited insurance representatives" in the introductory paragraph.

SUBCHAPTER 4. MISCELLANEOUS MARKETING
AND RELATED REQUIREMENTS

11:17A-4.1 Agent and broker authorized to collect premiums

(a) Premium monies collected by an insurance producer acting as an insurance agent shall be deemed to be received by the insurer by whom the agent is authorized to act whether or not the agent actually remits the monies to the insurer.

(b) Premium monies collected by an insurance producer acting as an insurance broker shall be deemed to be received by the insurer in accordance with the provisions of N.J.S.A. 17:22-6.2a.

11:17A-4.2 Insurance producer to witness signature of insured

In cases where an applicant's signature is required, an insurance producer who takes an application for insurance shall be required to witness the signature of the prospective insured on the application prior to the submission of the application to the insurer only when the application is signed by the applicant after having been completed in a face to face meeting between the producer and the prospective insured. This requirement may be waived, however, upon prior written authorization by the insurer.

Amended by R.1995 d.60, effective February 6, 1995.

See: 26 N.J.R. 4307(a), 27 N.J.R. 562(a).

Amended by R.2010 d.158, effective July 19, 2010.

See: 41 N.J.R. 4055(a), 42 N.J.R. 1611(a).

Inserted "only when the application is signed by the applicant after having been completed in a face to face meeting between the producer and the prospective insured".

11:17A-4.3 Confirmation of underwriting information

(a) Every insurance producer shall, within 10 days after the effectuation of an insurance transaction made through an insurance producer which modifies the terms of an existing insurance contract or the terms of an application for insurance, notify a policyholder or applicant, in writing, of all information submitted to the insurance producer by the policyholder or applicant pertinent to the modification, including confirmation that the insurance producer has sent the information to the insurer.

1. The requirement in (a) above shall apply to all insurance policies, certificates, binders and endorsements.
2. The requirement in (a) above shall not apply when the request for such modification is required to be submitted by the policyholder or applicant to the insurance producer in writing.

Amended by R.1995 d.60, effective February 6, 1995.

See: 26 N.J.R. 4307(a), 27 N.J.R. 562(a).

11:17A-4.4 Special underwriting associations

(a) Every insurance producer who solicits, negotiates or sells contracts of insurance for the placement of risks in any residual market mechanism created by or pursuant to any statute shall conduct his or her business in accordance with the applicable plan of operation.

(b) For the purpose of this section, "solicit," "negotiate" or "sell" shall have the same meanings as provided by N.J.A.C. 11:17A-1.2.

Amended by R.1995 d.60, effective February 6, 1995.

See: 26 N.J.R. 4307(a), 27 N.J.R. 562(a).

Amended by R.2002 d.354, effective November 4, 2002.

See: 34 N.J.R. 2286(a), 34 N.J.R. 2549(b), 34 N.J.R. 3839(a).

Substituted references to sell for effect throughout.