



Government of Puerto Rico
OFFICE OF THE COMMISSIONER OF INSURANCE

RULING LETTER NO.: N-CA-08-117-2000
August 25, 2000

**TO ALL DOMESTIC INSURERS AND ALL
GENERAL AGENTS AND MANAGERS OF FOREIGN INSURERS**

RE: Revocation of Rule 16 of the Regulations of the Puerto Rico Insurance Code

Dear Sirs and Madams:

According to the public policy of reorienting government regulations towards stimulating private initiative with a minimum of bureaucratic obstacles, we have revoked Rule 16 of the Regulations of the Puerto Rico Insurance Code ("el Code") titled "Advertising."

The following are some of the most important implications of this revocation:

1. The requirement that a copy of advertisements that are to be published be submitted to the Commissioner is eliminated. To this effect, this Office will not evaluate advertisements, nor approve or disapprove them before publication. From the date of revocation of this Rule, no advertisement that we may have approved in the past should contain any notice such as "Submitted for approval by the Commissioner of Insurance de Puerto Rico" or "Approved by the el Commissioner of Insurance of Puerto Rico."
2. Notwithstanding the above, the content of advertisements will continue to be governed by the relevant provisions of the Code. These provisions include the following, among others:
 - a. Section 9.051(1) of the Code establishes that "Any person who through any advertisement or any means of publicity uses the title of insurance consultant, insurance specialist, insurance advisor, insurance analyst or any similar title shall be deemed as an insurance consultant."
 - b. Section 9.351 of the Code establishes the following:

"Every holder of a license issued under this Chapter [IX] when publishing any advertisement or printed material or advertising through any means of communication shall identify him/herself according to the license he/she has been issued."

c. Section 10.040 of the Code provides the following:

"(1) No publication published in Puerto Rico, or radio or television broadcast, or any other medium, device, or means for the dissemination of information operated or located in Puerto Rico, shall publish, broadcast, or otherwise disseminate within Puerto Rico advertisements for or on behalf of any insurer not then authorized to transact insurance in Puerto Rico.

(2) This section shall not apply to publications published or advertising or information media prepared or manufactured in Puerto Rico for circulation exclusively in other states or countries."

d. Section 19.150 (1) (a) and (b) of the Code establishes the following:

"(1) No health services organization or its representative may use or permit the use of untrue or deceptive advertisements, applications which are untrue or deceptive, or any form of coverage evidence that is deceptive.

For the purposes of this Chapter:

(a) An informative statement or article may be considered untrue if it does not correspond to facts which are or might be significant for the subscriber or person who seeks to avail himself of a health care services plan.

(b) An informative statement or article shall be considered untrue if in the whole context in which said statement or article appears it may be understood by a person who does not have special knowledge of health plans as if it indicates any benefit or advantage, or the absence of any exclusion, limitation or disadvantage which may be significant to a subscriber or person who is contemplating subscribing to a plan, when in fact the absence of limitations, exclusions or disadvantages does not exist."

e. Section 27.020 of the Code establishes the following:

"No person shall engage in Puerto Rico in any act or practice which is prohibited in this chapter, or which is defined therein as, or determined pursuant thereto to be, an unfair method of competition or an unfair or deceptive act or practice in the business of insurance."

f. Section 27.040 of the Code establishes the following:

"No person shall make or disseminate orally or in any other manner any advertisement, information, matter, statement, or any other type of communication or expression:

(1) Misrepresenting or exaggerating the terms of any policy or the benefits or

advantages thereof or dividends or share of surplus to be received thereon, or setting forth false or misleading information or estimate as to dividends or share of surplus previously paid on similar policies.

(2) Using any name or title of any policy or class of policies misrepresenting the true nature thereof.

(3) Setting forth any misleading representation or any misrepresentation as to the financial condition of an insurer, or the volume of its business or as to the legal reserve system upon which any life insurer operates.

(4) Misrepresenting or exaggerating the financial condition, volume of business, or advantages of doing business through a particular producer or agency.

(5) Containing any assertion, representation, or statement with respect to the business of insurance or with respect to any person in the conduct of his insurance business, which is untrue, deceptive, or misleading.

g. Section 27.050 of the Code establishes the following:

"Any advertisement or other dissemination of information by or on behalf of an insurer stating the insurer's assets shall, in the same connection and with equal conspicuousness, state the insurer's liabilities, computed on the basis allowed for its annual statements. Any such statement purporting to show the insurer's capital shall state only the amount of actually paid-in capital."

h. Section 27.060 of the Code establishes, in part, the following:

"No person shall submit to any public official or divulge with the intent to deceive, any false statement of the financial situation of an insurer."

i. Section 27.070 of the Code establishes the following:

"No person shall make, publish, or disseminate or aid, abet or encourage the making, publishing or dissemination of any information or statement which is false or maliciously critical of or derogatory to the financial condition of an insurer, and which is designed to injure in its reputation or business any insurer, or any domestic corporation or group being formed pursuant to this title for the purpose of becoming an insurer, or other person engaged in the insurance business."

j. Section 27.150 of the Code establishes the following:

"No person shall make any misleading representations or incomplete or fraudulent comparisons of any insurance policies or insurers for the purpose of

inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, or convert any insurance policy."

- k. Section 28.070(3)(a) of the Code requires that advertisements related to the organization of an insurer be submitted to the Commissioner, and such provision with regard to such submission is not affected by the revocation of Rule 16, *supra*. Said section provides the following:

"With the application the applicant shall file with the Commissioner such of the following documents as may not already be so on file:

- (a) Copy of the articles of incorporation...
- (d) Copy of any prospectus, advertising, or literature proposed to be used."(our emphasis)

- l. Section 28.180 of the Code establishes the following:

"Every person who, with intent to deceive, knowingly files or exhibits any false account, statement, document, or advertisement, relative to the affairs of any insurer, or of any corporation or syndicate of the kind enumerated in § 28.060 of this Code, formed or proposed to be formed, shall be guilty of a felony and be subject to a fine of not more than five thousand dollars (\$5,000) or imprisonment for not more than five (5) years, or both penalties."

- m. Section 36.370 of the Code establishes the following:

"No person shall cause or permit to be made, issued or circulated in any form:

- (a) Any misrepresentation or false or misleading statement concerning the terms, benefits or advantages of any fraternal insurance contract now issued or to be issued in Puerto Rico, or the financial condition of any firm;
- (b) any false or misleading estimate or statement concerning the dividends or shares of surplus paid or to be paid by any firm on any insurance contract, or
- (c) any incomplete comparison of an insurance contract of one firm with an insurance contract of another firm or insurer for the purpose of inducing the lapse or surrender of any insurance contract. A comparison of insurance contracts is incomplete if it does not compare in detail

- (1) The gross rates, and the gross rates less any dividend or other reduction allowed at the date of the comparison; and
- (2) any increase in cash values, and all the benefits provided by each contract for the possible duration thereof as determined by the life expectancy of the insured; or if it omits from consideration:
- (3) any benefit or value provided in the contract;
- (4) any differences as to amount or payment period of rates; or
- (5) any differences in limitations or conditions or provisions which directly or indirectly affect the benefits. In any determination of the incompleteness or misleading character of any comparison or statement, it shall be presumed that the insured had no knowledge of any of the contents of the contract involved.

n. Section 38.190 of the Code establishes the following:

"No person, including an insurer, agent or affiliate of an insurer shall make, publish, disseminate, circulate or present to the public or shall cause directly or indirectly to be made, published, disseminated, circulated or present to the public, in any newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster or on a television or radio station, or in any other manner, any advertisement, announcement or statement, written or oral which uses the existence of the Puerto Rico Miscellaneous Insurance Guaranty Association for the purpose of selling, soliciting or inducing the purchase of any kind of insurance covered by said Association. This section, however, shall not be applicable to the Puerto Rico Miscellaneous Insurance Guaranty Association."

o. Section 39.180 of the Code establishes the following:

"No person, including a insurer, agent or affiliate of an insurer shall make, publish, disseminate, circulate or place in public view or cause to be made, published, disseminated, circulated or placed in public view, directly or indirectly, in any newspaper, magazine or other publication or as a notice, circular, pamphlet, letter or poster, or over a radio or television station, or otherwise, any written or oral advertisement, notice or statement, using the existence of the Puerto Rico Life and Disability Insurance Guaranty Association for the purpose of selling, soliciting or as an inducement for the purchase of any type of life and disability insurance. However, this section shall not apply to the Puerto Rico Life and Disability Insurance Guaranty Association "

p. Section 1 of Rule 42 of the Regulations of the Code, regarding the substitution of policies, establishes the following:

"Any insurer authorized to transact insurance in Puerto Rico shall issue written instructions to its agents with regard to the rules and measures to be complied

with in preparing and using illustrations of costs, comparisons, advertisements and other promotional material. In these instructions the insurers must require that their agents provided prospective insureds with an appropriate, complete, and clear statement of the costs, benefits and other provisions of the policy. Copies of these instructions shall be filed in the office of the manager or general agent in Puerto Rico of each insurer and be presented to the Commissioner of Insurance upon request."

- q. Rule 50 of the Regulations of the Code, regarding Medicare supplementary insurance, in its pertinent part, the following:

"An issuer shall provide a copy of any Medicare supplement advertisement intended for use in Puerto Rico whether through written, radio or television medium to the Commissioner of Insurance of Puerto Rico for review or approval by the Commissioner to the extent it may be required under the Insurance Code of Puerto Rico and its Regulations."

The Rule also provides the following

"(B) In addition to the practices prohibited in chapter 27 of the Insurance Code of Puerto Rico, the following acts and practices are prohibited:

- (1) Twisting. Knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert any insurance policy or to take out a policy of insurance with another insurer.
- (2) High pressure tactics. Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.
- (3)
- (4) Cold lead advertising. Making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by made by an insurance agent or insurance company.

(C) The terms "Medicare Supplement," "Medigap," "Medicare Wrap-Around" and words of similar import shall not be used unless the policy is issued in compliance with this Rule."

As can be seen in the above examples, the provisions regarding advertisements contained in the Code, as well as in other rules of the Regulations of the Code, are numerous. Therefore, we must emphasize that the revocation of Rule 16, *supra*, has no affect whatsoever on the obligation of all persons engaged in the insurance business to abstain from disseminating or causing to disseminate deceptive advertisements or that have the capacity or tendency to mislead. It is also necessary to note that among other possible sanctions, in the event of any violation of the provisions of Chapter 27 of the Code the sanctions provided in Section 27.300 the Chapter will be applied, as follows:

"Any person who furnishes information verbally or in writing, or offers any testimony on improper or illegal actions which, due to their nature constitute fraudulent acts in the insurance business, knowing that the facts are false shall incur a felony and, upon conviction, shall be punished by a fine of not less than five thousand dollars (\$5,000), nor more than ten thousand dollars (\$10,000) for each violation."

Finally, even though Rule 16 is hereby revoked, it must be noted that many of the concepts in that Rule continue to represent conduct and deceptive practices subject to applicable provisions and sanctions in the Code. These concepts will be part of the criteria that this Office will use to review the conduct of any person that publishes or causes the publication of advertisements or promotional material related in any manner with insurance, in order determine whether such conduct does not contravene the provisions of applicable law. These concepts include the following:

1. Not using deceptive words, phrases or illustrations, that is to say, words, phrases or illustrations that are confusing or have the capacity to be deceptive in regard to any payable benefit, covered loss or premium to be paid with regard to any policy. Advertising related to payable benefits, covered losses or premiums to be paid should be sufficiently complete and clear as to prevent any deceit or the capacity or tendency to be misleading.
2. Disclosing exceptions, reductions and limitations, that is to say, an advertisement that for example, refers to an amount of money, a period time for which the benefit is payable, the cost of a policy or coverage or specific benefit of the policy or coverage or loss for which the benefit is payable shall also describe the exceptions, reductions and limitations that affect the basic provisions of the policy or coverage, since otherwise the advertisement would have the capacity and tendency to confuse or mislead.
3. Testimonials used in advertisements must be genuine, represent the opinion of the author, be applicable to the policy being advertised, and be appropriately reproduced. It will be deemed that by using a testimonial the advertiser assumes the statements made in the testimonial as its own.
4. Inclusion of relevant facts. An advertisement related to the dollar amount of claims

paid, the number of persons insured, subscribers or similar statistical information should adequately reflect all relevant facts. Such an advertisement should not imply that the statistics are derived from the advertised policy unless that is actually the case.

5. Not using statistics without identifying their source. Statistics used in any advertisement should indicate their source as well as the applicable date and the date on which the source was published,
6. Not using unfair or incomplete comparisons. In this regard comparisons and superlatives should be avoided, unless they may be proved objectively.
7. Not falsely discrediting competitors, their policies, services or business methods or unfairly disparaging the methods of the competition or their insurance marketing.
8. Adherence to truthful facts, that is to say, an advertisement will not contain factually untrue statements, or misleading by implication, in matters such as the assets, corporate structure, financial position, years of operation or relative position in the insurance business of any entity authorized to transact insurance business.
9. Clear identification. The name of any holder of a license or certificate of authority should appear clearly and prominently in all advertisements, as the name appears in the articles of incorporation approved by this Office. No advertisement should contain a name, any designation of a group of insurers, name of parent companies or any particular division of a holder of a license or certificate of authority, service mark, slogan, logo or other instrument that has the capacity and tendency to confuse, mislead or deceive regarding the true identity of the holder of the license or certificate of authority.
10. The advertisement should be consistent with the insurance contract to which it refers. Inconsistencies between the content of an advertisement and the insurance contract will be indicative of ambiguity in the language of the contract.
11. No advertisement may contain untrue statements with regard to the time within which claims are paid or statements that imply that settlements will be liberal or generous beyond the terms of the insurance coverage.

We expect a firm commitment from all components of the insurance industry with regard to the dissemination of truthful and honest information, for the benefit of insurance consumers and which will significantly enhance the image of integrity and rectitude that is so essential for the proper functioning of our industry.

General agents and managers of foreign insurers should advise such insurers of the provisions of this ruling letter.

Strict compliance with the provisions of this ruling letter is required.

Very truly yours,

SIGNED

Juan Antonio García
Commissioner of Insurance