

**BEFORE THE COMMISSIONER OF INSURANCE
OF THE STATE OF KANSAS**

In the Matter of)
Patrons Insurance Company) Docket No. 3450-MC

ORDER

Pursuant to the authority conferred to the Commissioner of Insurance in K.S.A. 40-222, Sandy Praeger, the duly elected, qualified Commissioner of Insurance hereby adopts the Kansas Insurance Department's May 30, 2004, Report of Market Conduct Examination of Patrons Insurance Company (attached herein as Attachment A) by incorporating the same in its entirety with specific findings stated as follows:

Findings of Fact

1. The Commissioner of Insurance has jurisdiction over this matter pursuant to K.S.A. 40-222.
2. The Kansas Insurance Department (hereinafter "KID") completed a market conduct examination of the Patrons Insurance Company (hereinafter "Patrons" or "the Company") in May 2004.
3. On or about December 17, 2004, the examiner-in-charge provided Patrons with a draft of the written Report of Market Conduct Examination with notice advising the company regarding its opportunity to prepare and submit to KID written comments, additions, or acceptance with respect to any and all matters contained in the report by January 21, 2005.
4. Benchmark responded with written comments regarding the draft report on January 20, 2005. (See Attachment B).

5. The Kansas Commissioner of Insurance has since fully reviewed said Kansas report.
6. Patrons' privacy and security policies address only its current policyholders. These policies do not encompass privacy and security concerns regarding the beneficiaries of the policyholders, its past customers, third party claimants, and others who are involved with the policy processes or in relation with the company's policyholders.
7. In thirteen (13) out of twenty-five (25) randomly selected Workers Compensation policies effective in 2003, Patrons' premium calculations were based on faulty NCCI loss costs data that were erroneously loaded into the company's system¹.
8. In three (3) out of sixty-six (66) randomly selected policies in the Other Commercial Lines category, Patrons did not experience-rate in accordance with the rules and rates that it has filed with KID.²
9. In six (6) out of forty-two (42) randomly selected Auto policies, Patrons did not use its correct base rate on file with the KID to calculate the medical payments coverage in its private passenger auto business.³

¹ Work Comp policies based on faulty lost costs in 2003:

WCPKS 07539	WCPKS07497	WCPKS08774	WCPKS08050
WCPKS07276	WCPKS07780	WCPKS05854	WCPKS08030
WCPKS08294	WCPKS08033	WCPKS08097	WCPKS07975
WCPK119139			

² BOP policies not experience-rated:

BOPK000501	BOPKS04718	BOPK001497
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³ Private passenger auto policies Med Pay upon un-filed base rate:

SA00510192	SA00253445	SA00510817	SA00216731
SA00312659	SA00506197		

10. In three (3) fire policies among fifty (50) randomly selected files in Property category, Patrons failed to apply the correct rating relativity for the broad form coverage.⁴
11. Patrons revised the declaration pages of its homeowner and fire business policies in September 2003 and April 2004, respectively, but failed to file the said changes with KID.⁵

Applicable Law

12. K.S.A. 40-2,125 states, in pertinent parts:
- (a) If the commissioner determines after notice and opportunity for a hearing that any person has engaged or is engaging in any act or practice constituting a violation of any provision of Kansas insurance statutes or any rule and regulation or order thereunder, the commissioner may in the exercise of discretion, order any one or more of the following:
- (1) Payment of a monetary penalty of not more than \$1,000 for each and every act or violation, unless the person knew or reasonably should have known such person was in violation of the Kansas insurance statutes or any rule and regulation or order thereunder in which case the penalty shall be not more than \$2,000 for each and every act or violation;

13. K.S.A. 40-955 states, in pertinent parts:
- (a) Every insurer shall file with the commissioner . . . every manual of classifications, rules and rates, every rating plan, policy form and every modification of any of the foregoing which it proposes to use. Every such filing shall indicate the proposed effective date

⁴ Fire policies with incorrect rating relativity application:
 DP00122304 DP00122857 DP00122601

⁵ Homeowner policies affected by dec page changes:

HO00196815	HO00196571	HO00197383	HO00150263	HO00154339
HO00166290	HO00147919	HO00141809	HO00150063	HO00022891
HO00023545	HO00153030	HO00155521	HO00182032	HO00167864

Fire policies affected by dec page changes:
 DP00122772 DP00128818 DP00122821 DP00122776 DP00122857

and the character and extent of the coverage contemplated and shall be accompanied by the information upon which the insurer supports the filings.

(b) Any rate filing for the basic coverage required by K.S.A. 40-3401 *et seq.* and amendments thereto, loss costs filings for workers compensation, and rates for assigned risk plans established by article 21 of chapter 40 of the Kansas statutes Annotated or rules and regulations established by the commissioner shall require approval by the commissioner before its use by the insurer in this state. Policy forms shall require approval by the commissioner before use by insurers in this state, consistent with the requirements of K.S.A. 40-216 and amendments thereto. As soon as reasonably possible after such filing has been made, the commissioner shall in writing approve or disapprove the same, except that any filing shall be deemed approved unless disapproved within 30 days of receipt of the filing.

(c) Any other rate filing, except personal lines filing, shall become effective on filing or any prospective date selected by the insurer, subject to the commissioner disapproving the same if the rates are determined to be inadequate, excessive, unfairly discriminatory or otherwise fails to meet the requirements of this act. Personal lines rate filings shall be on file for a waiting period of 30 days before becoming effective, subject to the commissioner disapproving the same if the rates are determined to be inadequate, excessive, unfairly discriminatory or otherwise fail to meet requirements of this act. The term “personal lines” shall mean insurance for noncommercial automobile, homeowners, dwelling fire-and-renters insurance policies, as defined by the commissioner by rules and regulations. A filing complies with this act unless it is disapproved by the commissioner within the waiting period or pursuant to subsection (e).

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(f) No insurer shall make or issue a contract or policy except in accordance with filings which have been filed or approved for such insurer as provided in this act.

...

K.S.A. 40-955

14. K.S.A. (2004 Supp.) 40-216 states, in pertinent part:

- (a) No insurance company shall hereafter transact business in this state until certified copies of its charter and amendments thereto shall have been filed with and approved by the commissioner of insurance. A copy of the bylaws and amendments thereto of insurance companies organized under the laws of this state shall also be filed with and approved by the commissioner of insurance. The commissioner may also require the filing of such other documents and papers as are necessary to determine compliance with the laws of this state. No contract of insurance or indemnity shall be issued or delivered in this state until the form of the same has been filed with the commissioner of insurance, nor if the commissioner of insurance gives written notice within 30 days of such filings, to the company proposing to issue such contract, showing wherein the form of such contract does not comply with the requirements of the laws of this state; but the failure of any insurance company to comply with this section shall not constitute a defense to any action brought on its contracts. An insurer may satisfy its obligation to file its contracts of insurance or indemnity either individually or by authorizing the commissioner to accept on its behalf the filings made by a licensed rating organization or another insurer.

Under such rules and regulations as the commissioner of insurance shall adopt, the commission may, by written order suspend or modify the requirement of filing forms of contracts of insurance or indemnity, which cannot practicably be filed before they are used. Such orders, rules and regulations shall be made known to insurers and rating organizations affected thereby. The commissioner may make an examination to ascertain whether any forms affected by such order meet the standards of this code.

...

15. K.A.R. 40-3-12 states:

(a) "Individual risk rating plans" means individual risk premium modification plans, schedule rating plans and similar plans applicable to commercial lines of property and casualty insurance which include one or more of the following types of premium modification:

(1) Risk modification means the application of judgment debits and credits through schedule rating or individual risk premium modification plans to the individual rates otherwise applicable, based on the individual risk's variations in hazard and characteristics of the risk not reflected in its experience. Risk modification does not include variations in expenses.

(2) Expense modification means the variation of the premium for an individual risk that corresponds to the variation in the expenses of this risk from the provision for losses applicable to that entire class of risk.

(3) Experience modification, excluding retrospective rating plans, means a variation in the premium for an individual risk that corresponds to that risk's variation in past loss experience from the provision for losses applicable to that entire class of risk.

(b) Individual risk rating plans permitted by K.S.A. 40-927 and 40-1112 shall comply with the following requirements:

(1) Each plan shall specify the kind of insurance or subdivision or combination to which the plan applies.

(2) The maximum credit or debit resulting from risk modification shall not exceed 25 percent.

(3) Each plan shall establish standards which bear a relationship to the variation in hazard or expense, or both, to be measured.

(4) Each plan shall be mandatory for all eligible risks, and shall be applied by company representatives responsible for underwriting the risk or risks involved in a manner that is uniform and not unfairly discriminatory.

(5) Each company using individual risk rating plans shall obtain all information necessary to determine the proper application of the plans to any particular risk. Each company shall maintain adequate supporting information for examination by the commissioner upon request.

(6) Any change or removal of credits or debits which results from the application of individual risk rating plans shall occur only on the anniversary or renewal of a policy but not during the policy period.

(7) Any change or removal of a debit or credit which was applied under an individual risk rating plan or expense modification must be based on conclusive evidence that either the conditions which produced the most recent debits or credits no longer exist or their impact has been reduced in direct proportion to the new rating treatment applied.

16. K.A.R. 40-1-46 states:

The national association of insurance commissioners' "privacy of consumer financial and health information regulation," as adopted by the national association of insurance commissioners on September 26, 2000, is hereby adopted by reference subject to the following exceptions: Sections 1 and 24 are not adopted by reference. This amended regulation shall be effective on and after February 1, 2002.

K.A.R. 40-1-46

17. NAIC Privacy of Consumer Financial and Health Information Regulation states:

in pertinent parts:

...

Section 7. Information to be Included in Privacy Notices

A. General rule. The initial, annual and revised privacy notices that a licensee provides under Sections 5, 6 and 9 shall include each of the following items of information, in addition to any other information the licensee wishes to provide, that applies to the licensee and to the consumers to whom the licensee sends its privacy notice:

(1) The categories of nonpublic personal financial information that the licensee collects;

(2) The categories of nonpublic personal financial information that the licensee discloses;

...

C. Examples.

...

(2) Categories of nonpublic personal financial information a licensee discloses.

...

(b) A licensee does not adequately categorize the information that it discloses if the licensee uses only general terms, such as transaction information about the consumer.

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Appendix A. Sample Clauses

Licensees, including a group of financial holding company affiliates that use a common privacy notice, may use the following sample clauses, if the clause is accurate for each institution that uses the notice. (Note that disclosure of certain information, such as assets, income and information from a consumer reporting agency, may give rise to obligations under the federal Fair Credit Reporting Act, such as a requirement to permit a consumer to opt out of disclosures to affiliates or designation as a consumer reporting agency if disclosures are made to nonaffiliated third parties.)

A-2-Categories of information a licensee discloses (institutions that disclose outside of the exceptions)

A licensee may use one of these clauses, as applicable, to meet the requirement of Section 7A(2) to describe the categories of nonpublic personal information the licensee discloses. The licensee may use these clauses if it discloses nonpublic personal information other than as permitted by the exceptions in Sections 14, 15 and 16.

Sample Clause A-2, Alternative 1:

We may disclose the following kinds of nonpublic personal information about you:

- Information we receive from you on applications or other forms, such as [provide illustrative examples, such as "your name, address, social security number, assets, income, and beneficiaries"];
- Information about your transactions with us, our affiliates or others, such as [provide illustrative examples, such as "your policy coverage, premiums, and payment history"]; and
- Information we receive from a consumer reporting agency, such as [provide illustrative examples, such as "your creditworthiness and credit history"].

Conclusion

Based upon the Findings of Fact and Applicable Law enumerated in paragraphs #1 through #17 above,

IT IS, THEREFORE, ORDERED BY THE COMMISSIONER OF INSURANCE:

- a. The Kansas Insurance Department's May 30, 2003, Report of Market Conduct Examination of Patrons Insurance Company is herein adopted in its entirety.
- b. Patrons' policies regarding privacy of consumer financial and health information are inadequate to meet the standard set forth by NAIC

Privacy of Consumer Financial and Health Information Regulation.

Patrons shall amend and modify its said policies in accordance with the NAIC standards. Patrons' has complied with this requirement in May, 2005.

- c. Patrons' utilization of faulty NCCI loss costs in its workers compensation policies violates K.S.A. 40-955. The company is herein directed to submit a written plan to KID within 30 days from the date of this order regarding the schedule and method of re-rating all affected policies effective in 2003, and issuance of prompt refunds to all affected policyholders. Patrons has complied with these requirements.
- d. Pursuant to K.S.A. 40-2,215, Patrons shall pay a monetary penalty, due and payable to Kansas Insurance Commissioner on or before the 14th day from the date of this order, in the amount of Five Thousand 00/100 Dollars (\$5,000.00) for the above-stated violations of K.S.A. 40-955.
- e. Patrons' failure to experience-rate in its commercial lines in accordance with the rules and rates that it has filed with KID violates K.S.A. 40-955 and K.A.R. 40-3-12. The company is herein directed to submit a written plan to KID within 30 days from the date of this order outlining its proposal to experience-rate all applicable risks, or filing with KID a premium eligibility threshold complying with K.A.R. 40-3-12 and K.S.A. 40-955. Patrons has complied with this requirement in February, 2005.
- f. Pursuant to K.S.A. 40-955 and K.A.R. 40-3-12, Patrons shall also file with KID, within 30 days from the date of this order, the corrected

Medical Payment factors for rating of private passenger auto policies.

Patrons has complied with this requirement.

- g. Patrons is further directed herein to submit its plan to KID within 30 days from the date of this order outlining its procedures to re-rate all its Broad Form Dwelling Fire policies that contained rate relativity miscalculations and, scheduling of issuance refunds to all affected policyholders. Patrons has complied with this requirement.
- h. Pursuant to K.S.A. 40-216, Patrons shall file with KID its revised declaration page forms for its Homeowners and Dwelling Fire policies within 30 days from the date of this order. Patrons has complied with these requirements.

IT IS SO ORDERED THIS 29th DAY OF JUNE 2005, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.



/s/ Sandy Praeger _____
Sandy Praeger
Commissioner of Insurance
BY:

/s/ John W. Campbell _____
John W. Campbell
General Counsel

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served the above and foregoing Order on this 29th day of June, 2005, by causing the same to be deposited in the United States Mail, first class postage prepaid, addressed to the following:

James E. Cunningham, *Esq.*
Secretary / General Counsel
Patrons Insurance Company
2102 White Gate Drive
Columbia, MO 65202

/s/ Hsingkan Chiang
Hsingkan Chiang, Staff Attorney

NOTICE OF RIGHTS

Patrons Insurance Company (“Patrons”) is entitled to a hearing pursuant to K.S.A. §77-537, the Kansas Administrative Procedure Act. If Patrons desires a hearing, the company must file a written request for a hearing with:

John W. Campbell, General Counsel
Kansas Insurance Department
420 S.W. 9th Street
Topeka, Kansas 66612

This request must be filed within fifteen (15) days from the date of service of this Order. If Patrons requests a hearing, the Kansas Insurance Department will notify the company of the time and place of the hearing and information on the procedures, right of representation, and other rights of parties relating to the conduct of the hearing, before commencement of same.

If a hearing is not requested in the time and manner stated above, this Order shall become effective as a Final Order upon the expiration of time for requesting a hearing, pursuant to K.S.A. §77-613. In the event that Patrons files a petition for judicial review, pursuant to K.S.A. §77-613(e), the agency officer to be served on behalf of the Kansas Insurance Department is:

John W. Campbell, General Counsel
Kansas Insurance Department
420 S.W. 9th Street
Topeka, Kansas 66612

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The undersigned hereby certifies that he served the above and foregoing Notice of Rights on this _29th day of __June__, 2005, by causing the same to be deposited in the United States Mail, first class postage prepaid, addressed to the following:

James E. Cunningham, *Esq.*
Secretary / General Counsel
Patrons Insurance Company
2102 White Gate Drive
Columbia, MO 65202

_s/ Hsingkan Chiang_____

Hsingkan Chiang, Staff Attorney