

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

In the Matter of)	
GOLDEN RULE INSURANCE)	Docket No. 3931-EO
COMPANY)	

FINAL ORDER

Now on this 28th day of May, 2009 this matter comes on for announcement of the decision of the Presiding Officer.

Petitioner, Kansas Department of Insurance (“KID”) appears by John Dowell and Jennifer Sourk. Respondent, Golden Rule Insurance Company (“Golden Rule”), appears by Kevin Fowler. There were no other appearances.

Procedural Status

An Emergency Order was issued by KID on August 13, 2009. On August 26, 2008, KID filed a Petition to Enforce the Administrative Order in the District Court of Shawnee County, Kansas. On September 22, 2008, the District Court ordered a stay of the Emergency Order. On January 9, 2009, the District Court remanded the proceeding to the Administrative Presiding Officer for hearing on the merits and continued the order to stay enforcement of the Emergency Order pending ruling by the Administrative Presiding Officer. The Presiding Officer held an evidentiary hearing in the above captioned matter on February 19, 2009 and now announces findings of fact, conclusions of law, and enters the following orders.

Issues

Does a medical emergency exist such that the Emergency Order should be enforced?

Is Golden Rule required to preapprove the medical procedure?

Is Golden Rule bound by the actions of its agent such that its contract with the insured is binding?

Has Golden Rule violated K.S.A. 40-2404(d), (f), and/or (i)?

Findings of Fact

1. Golden Rule, located at 7440 Woodland Drive, Indianapolis, Indiana 46278, is licensed to transact and has continuously transacted the business of insurance in the State of Kansas since April 13, 1977.
2. On May 5, 2008, KID received a complaint against Golden Rule for the company's denial of preapproval for a medical procedure.
3. Golden Rule has refused to preapprove the exploratory surgery proposed by claimant's physician.
4. Golden Rule offered a rider to the complainant's policy excluding all coverage for digestive system diseases or disorders prospectively.
5. The lapse of time between the filing of the Summary Order and the Petition for Civil Enforcement of the Administrative Order indicates that no life threatening circumstance was presented.
6. The failure of a physician to perform the procedure without preapproval indicates that no life threatening circumstance was presented.
7. There was no showing that a medical emergency exists.
8. The complainant accurately answered all questions posed by the agent at the time the agent prepared the application for insurance.
9. The agent did not submit a true and accurate application to Golden Rule.

10. The agent is the holder of an insurance agent license issued by the Kansas Commissioner of Insurance who has been appointed as an agent of several insurance companies including Assurant Health and Golden Rule.
11. The agent should never have allowed or recommended or suggested or been a party to The complainant dropping her original major medical insurance coverage with Blue Cross-Blue Shield of Kansas.
12. The complainant was ignorant of the health insurance market and she was not assisted appropriately by her agent.
13. An insurance company which appoints an agent accepts the fiduciary responsibility of the agent and no contract between the company and its appointed agent can abrogate the company's responsibility to the insured.
14. The actions of agents in Kansas bind their insurance companies.
15. Golden rule did not receive any information which even remotely suggested that the complainant had a prior medical condition; Golden rule acted in good faith when applying its underwriting requirements to the complainant without any knowledge of her prior medical condition.
16. The agent was appointed by Golden Rule.
17. The contract between Golden Rule and the agent requires the agent to submit true and accurate documents and indemnify the company for any of the agent's actions that violate the law and result in damages to the company.

Conclusions of Law

18. The Department of Insurance has jurisdiction pursuant to K.S.A. 2401 *et. seq.* and K.S.A. 40-2406(a).

19. The requirements of K.S.A. 77-536 must be met for an emergency order to be issued.
20. The lapse of time between the filing of the Summary Order and the Petition for Civil Enforcement of the Administrative Order indicates that there is no urgent medical emergency that meets the requirements of K.S.A. 77-536.
21. The failure of a physician to perform the procedure without preapproval indicates that there was no life threatening circumstance justifying the issuing of an emergency order under the terms of K.S.A. 77-536.
22. Therefore, the Presiding Officer finds that there is no medical emergency requiring the Presiding Officer to enforce the emergency order.
23. The Presiding Officer finds that Golden Rule is not required to pay for the procedure until such time as the right to appeal has expired or all appeals have been exhausted.
24. The contract between Golden Rule and the complainant does not require the company to preapprove the procedure.
25. The Presiding Officer finds that the question of whether the contract requires Golden Rule to preapprove the medical procedure is moot because Golden Rule has predenied it.
26. The Presiding Officer finds that there is no evidence that fraud was committed by the complainant.
27. The contract between Golden Rule and the agent requires the agent to submit true and accurate documents.
28. An insurance company by appointing an agent to represent them accepts the fiduciary duty of the agent.

29. No contract between the company and the agent can abrogate the company's responsibility to the insured.
30. In Kansas, the actions of agents bind their insurance companies.
31. Golden Rule is obligated by its contract with the complainant to pay for the procedure in question and to continue to cover the complainant for other medical services as provided in the contract.
32. Golden Rule has refused to pay a claim without conducting a reasonable investigation based upon all available information in violation of K.S.A. 40-2404 (9)(d).
33. Golden Rule has not attempted in good faith to effectuate a prompt, fair and equitable settlement of the claim when the claim became reasonably clear in violation of K.S.A. 40-2404(9)(f).
34. Golden Rule has not violated K.S.A. 40-2404(9)(i) and the Presiding Officer vacates the part of paragraph 12 of the Emergency Order that states that the Company did so.
35. Pursuant to K.S.A.40-24007(a)(3), the Presiding Officer orders Golden Rule to redress the complainant's injury by payment of money withheld for the procedure in question.

Policy Reasons for the Rulings

36. An emergency order is an extraordinary remedy that is authorized by K.S.A. 77-536.
37. Absent the showing that an immediate danger exists, Respondent is entitled to due process rights including but not limited to notice and a right to appear and present evidence before any order is entered.

38. Consumers are entitled to rely on the representations of an agent who has been appointed by a company and who appears to be informed about the company policies. Consumers are generally ignorant of the nature of health insurance and should be assisted properly by the agent.
39. Absent fraud by the consumer, companies are required to accept the representations of their appointed agents to prevent unjustified harm to consumers.

ORDERS

Based on the above stated findings of fact, conclusions of fact, and policy reasons, the Presiding Officer orders and directs Golden Rule to redress the complainant's injury by payment of money withheld for the procedure in question and continue to cover the complainant for other medical services as provided in the contract.

All other findings of fact, conclusions of law, and policy reasons stated by the Presiding Officer on the record on the 28th day of May, 2009 are herein incorporated as if fully set forth in this Final Order.

IT IS SO ORDERED ON THIS 3rd DAY OF SEPTEMBER, 2009 IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.



 /s/ Robert M. Tomlinaon _____
Robert M. Tomlinson
Assistant Commissioner of
Insurance/Presiding Officer

Dated this 3rd day of Sept. , 2009.

Prepared by:

/s/ Susan Ellmaker
Susan Ellmaker #9348
Staff Attorney
Kansas Insurance Department

NOTICE OF RIGHTS

Pursuant to K.S.A. 77-601 *et seq.*, Golden Rule Insurance Company is entitled to judicial review of this Final Order. The petition for judicial review must be filed within thirty (30) days of service of this Final Order (plus three [3] days for service by mail pursuant to K.S.A. 77-531). In the event Golden Rule Insurance Company 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 SW 9th Street
Topeka, KS 66612

AMENDED CERTIFICATE OF SERVICE

The undersigned hereby certifies that she served the above and foregoing Final Order and Notice of Rights on this 10th day of September, 2009, by causing the same to be deposited in the United States Mail, first-class mail postage prepaid, addressed to the following:

Kevin M. Fowler KS #11227
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John M. Whelan, President
Golden Rule Insurance Company
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/s/ Susan Ellmaker
Susan Ellmaker #9348
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