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**3901-5-12 Misconduct by insurance license applicants and licensees.**

(A) Purpose

The purpose of this rule is to implement statutes setting forth standards of conduct and responsibility applicable to insurance license applicants, licensees, and/or companies licensed or authorized to transact the business of insurance by the superintendent of insurance.

(B) Authority

This rule is promulgated pursuant to the authority vested in the superintendent under sections 3901.041, 3901.21, and 3905.01 to 3905.14 of the Revised Code.

(C) ~~Conduct~~—The following conduct by individuals ~~warranting~~ warrants suspension, revocation, or refusal to issue or renew an insurance license, assessment of a civil penalty, or imposition of any other sanctions authorized under Title 39 of the Revised Code.:

Whenever it is shown, in accordance with the Revised Code, that an individual has solicited, procured, or placed additional or replacement health or sickness and accident insurance coverage where he or she knew or should have known that the insured or potential insured:

- (1) Was and would continue to be covered by substantially duplicative insurance coverage, where the additional coverage will either not pay additional benefits to those offered by the existing coverage or will provide minimal benefits in relation to the cost to that individual of maintaining such coverage; or
- (2) Would not be entitled to the benefits of that coverage, because of existing health conditions, where the agent had caused that individual to believe that he or she would be entitled to such benefits; or
- (3) Intended to replace existing insurance coverage but would not be entitled to receive benefits from the replacing insurance coverage until he or she had completed some waiting period, which the agent had not disclosed to the insured or potential insured.

(D) Responsibility of insurance company and/or agent for conduct of a licensed insurance agent or ~~sub-agent~~ an employee.

An insurance company and/or agent may be found to have engaged in an unfair or deceptive practice, whenever ~~it~~ any of the following is shown ~~that~~:

- (1) The insurance company or the managing or principal agent of an insurance agency knew or should have known of the misconduct of its licensed agent or employee, ~~sub-agent~~, as set forth in paragraph (C) of this rule, and has adopted a practice whereby it has:

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- (a) Expressly ratified, encouraged, or tolerated such misconduct; or
  - (b) Failed to notify the Ohio department of insurance on those occasions where it has reasonable cause to believe that there has been a violation or is a continuing violation of this rule, and the details thereof which are known by the company or agent. Such information shall be treated as confidential by the department of insurance in accordance with the statutes and rules contained in Chapter 39. of the Ohio Revised Code and the Ohio Administrative Code; ~~and~~ or
  - (c) Failed, upon the request of the department of insurance, to make a reasonable investigation to determine if such misconduct has occurred.
- (2) An insurance company has refused to refund an insured's or potential insured's premium payment, insurance distribution or refund, or to issue insurance coverage to that person, at that person's election, where the company's agent has violated any insurance law or rule.

An agent shall be deemed to be the agent of the company for purposes of paragraph (D)(2) of this rule whenever it is shown that:

- (a) The agent is appointed by the company and has solicited ~~or~~ sold or negotiated insurance to the insured or potential insured on behalf of the company; ~~and~~ or
- (b) The agent is not appointed by the company, or has been terminated as an agent of the company, but has been given or permitted to retain copies of the company's applications, receipts, rate books, or other supplies and has solicited and sold insurance coverage to the insured or potential insured who has justifiably relied on the agent's apparent authority to act on behalf of the company. The company shall not be deemed to be responsible for such agent's conduct, for the purposes of this rule, if it has made a good faith effort to recover its applications, receipts, rate books or other supplies.

~~The company shall not be deemed to be responsible for such agent's conduct, for the purposes of this rule, if it has made a good faith effort to recover its applications, receipts, rate books or other supplies. If the company is unable to recover such supplies, it will not be deemed to be responsible for such an agent's conduct if it notifies insureds or potential insureds by publication in a newspaper of general circulation in the county of the agent's principal place of business, that the agent is not authorized to represent the company.~~

(E) Severability

If any paragraph, term or provision of this rule is adjudged invalid for any reason, the judgment shall not affect, impair or invalidate any other paragraph, term or provision of

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this rule, but the remaining paragraphs, terms and provisions shall be and continue in full force and effect.