

# **OHIO DEPARTMENT OF INSURANCE**

**A  
TARGETED  
MARKET CONDUCT EXAMINATION  
OF  
AMERICAN PHYSICIANS ASSURANCE CORPORATION  
NAIC #33006**

**As of**

**June 30, 2003**





Bob Taft, Governor

Ann Womer Benjamin, Director

2100 Stella Court, Columbus, OH 43215-1067  
(614) 644-2658 www.ohioinsurance.gov

Honorable Ann Womer Benjamin  
Director  
Ohio Department of Insurance  
2100 Stella Court  
Columbus, Ohio 43215-1067

Director:

Pursuant to your instructions and in accordance with the powers vested under Title 39 of the Ohio Revised Code, a target market conduct examination was conducted on the Ohio business of:

American Physicians Assurance Corporation  
NAIC Company Code 33006

The examination was conducted at the Company's Home Office located at:

1301 N. Hagadorn Road East Lansing, Michigan 48823

A report of the examination is enclosed.

Respectfully submitted,

A handwritten signature in cursive script that reads 'David R. Beck'.

David R. Beck

Date: 12-2-2004

Chief, Market Conduct Division



Accredited by the National Association of Insurance Commissioners (NAIC)

Consumer Hotline: 1-800-686-1526

Fraud Hotline: 1-800-686-1527

OSHIIP Hotline: 1-800-686-1578

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## **SCOPE OF EXAMINATION**

The examination of American Physicians Assurance Corporation (the Company) commenced on November 17, 2003, at the Company's home office in East Lansing, Michigan. The initial examination of the Company was restricted to the underwriting and marketing of medical malpractice insurance from July 1, 2002, through June 30, 2003. The scope was limited to medical health providers and did not include emergency facilities or hospitals. The Company's 2003-2004 underwriting guidelines were also reviewed.

This examination was conducted under the authority provided by section 3901.11 of the Ohio Revised Code (ORC). This examination was conducted in accordance with the standards and procedures established by the National Association of Insurance Commissioners ("NAIC") and the applicable statutes, rules, and regulations of the State of Ohio.

## **METHODOLOGY**

The examination was conducted through a review of the Company's underwriting of new business files, in-force business files, non-renewal files, and cancellation files. A review was also conducted of the Company's corresponding policy and procedure manuals, rate filings, and system manuals. This information was supplemented, as necessary, with written inquiries to the Company requesting clarification and/or additional information.

The initial examination phase included: staff interviews, an overview of practices and procedures, clarifying the data requests, and understanding the Company's terminology and systems. Only files with Ohio insureds, policyholders and provider entities were reviewed. Tests were designed and applied to the files to determine the Company's level of compliance with Ohio insurance laws and regulations. These tests are described, and the results are noted in this report. The results of each test applied to a sample are reported separately. Each test is expressed as a "yes/no" question. A "yes" response indicates compliance, and a "no" response indicates non-compliance. In instances where possible errors were noted, the Examiners submitted a request for information to the Company concerning the apparent error.

## **SAMPLING**

The Examiners requested, and the Company supplied, reports of policy data (new business, applications, renewals, non-renewals, in-force and cancellations) in file formats specified by the Examiners. Except as otherwise noted, all tests were conducted on a sample of files randomly selected from a given report. These samples were selected using a standard business database application that provides a true random sample since it supplies a random starting point from which to pull the sample. In some instances, the populations were relatively small. In those instances, the entire population was reviewed.

## **COMPANY HISTORY**

The Company was formed under Michigan law on July 16, 1975, as Michigan Physicians Mutual Liability Company and commenced business on May 12, 1976. The title Mutual Insurance Corporation of America (MICOA) was adopted in July 1998. In December 2000, the Company converted from a mutual insurance company to a publicly owned stock company. At that time, the name was changed to American Physicians Assurance Corporation. The Company's conversion to a stock corporation included the formation of American Physicians Capital, Inc. (APCapital). This entity became the parent holding company, and transfer of ownership of Insurance Corporation of America, APSpecialty Insurance Corporation (formerly RML Insurance Company), APConsulting, LLC (formerly MICOA Consulting, LLC), APDirect Sales (formerly MICOA Direct), Preferred Ventures, Inc., and Alpha Advisors, Inc. to APCapital was completed. Effective October 1, 2000, the Company's wholly-owned subsidiary, Kentucky Medical Insurance Company (KMIC), was formally dissolved as a legal entity under a plan of dissolution approved by the Kentucky Insurance Department.

## **COMPANY OPERATIONS**

American Physicians Assurance Corporation is the largest of the three insurance subsidiary companies in the APCapital Group. The Company is licensed to sell medical professional liability insurance in thirty-two states. The Company's statutory home office and main administrative office is located in East Lansing, Michigan. In 2002, the Company discontinued

writing medical professional liability insurance in Florida due to unfavorable underwriting results.

### **MANAGEMENT**

President and CEO APAssurance, APCapital: Kevin Clinton

COO and Vice President APAssurance: Annette Flood

Vice President of Health Programs: Bob Beverwyk

Vice President of Marketing: Laura Kline

Vice President Chief Actuary: Kevin Dyke

Regional Manager, Claims: Carol Cassady

Regional Manager, Claims: Jeff Haisley

Regional Manager, Claims: Mike Tungate

Regional Manager, Claims: Jennifer Hendrick

Claims Legal Advisor: Erroll Imre

Vice President of Risk Management: Nancy Fitzgerald

Vice President of Underwriting: Rhonda Fossitt

### **CERTIFICATE OF AUTHORITY**

The Company operates under a Certificate of Authority issued in accordance with the laws of Ohio. In the course of the examination, the Examiners found the Company to be within the scope of its Certificate of Authority for Ohio.

### **UNDERWRITING**

#### **Methodology**

- The Examiners reviewed all Company written policies and procedures that instructed the underwriters and the agents on underwriting procedures and requirements concerning providers. Healthcare facilities were not included in the examination.
- The Company supplied the following data files pertaining to Ohio:

1. A list of all new business written during the examination period,
2. A list of all policies cancelled during the examination period,
3. A list of policies non-renewed during the examination period,
4. A list of applications submitted during the examination period, and
5. A list of policies active/in-force as of the last day of the exam period.

### **Underwriting Considerations**

- A policy may have one or multiple insureds.
- Each list is reviewed as an entire population.
- Each list is divided into the unique territories provided by the Company. The Company has five territories in the state of Ohio for this examination period. Territory “1” included the counties of Adams, Allen, Athens, Brown, Butler, Clermont, Clinton, Coshocton, Darke, Defiance, Fayette, Fulton, Gallia, Guernsey, Hamilton, Hardin, Harrison, Henry, Highland, Hocking, Holmes, Jackson, Lawrence, Licking, Madison, Meigs, Mercer, Miami, Monroe, Morgan, Muskingum, Noble, Paulding, Perry, Pickaway, Pike, Preble, Putnam, Ross, Scioto, Shelby, Union, Van Wert, Vinton, Warren, Washington, and Williams. Territory “2” included Ashtabula, Columbiana, Cuyahoga, Geauga, Lake, Lorain, Mahoning, Portage, and Trumbull counties. Territory “3” included Ashland, Belmont, Carroll, Crawford, Delaware, Erie, Fairfield, Franklin, Hancock, Huron, Jefferson, Knox, Lucas, Marion, Morrow, Ottawa, Richland, Sandusky, Seneca, Stark, Tuscarawas, Wayne, Wood, and Wyandot counties. Territory “4” included Auglaize, Champaign, Clark, Greene, Logan, and Montgomery counties. Territory “5” consisted of Medina and Summit counties. Because of the low volume of unique policies in some territories for cancellations, non-renewals, in-force, and new business, it was necessary to review the entire population instead of pulling samples.

### **APPLICATIONS**

**Standard:** Company rules pertaining to underwriting requirements regarding applications are in compliance with applicable statutes, rules, and regulations. ORC 3937.03 requires, in part, that

every insurer file every form of a policy, endorsement, rider, manual of classifications, rules, and rates, every rating plan, and every modification of any of them, which the insurer proposes to use.

**Test:** Did the Company adhere to their underwriting guidelines in applying the rates and rules filed with the Department?

**Findings:**

	Population	Yes	No
Territory 1	54	54	0
Territory 2	44	44	0
Territory 3	67	50	0
Territory 4	14	14	0
Territory 5	56	56	0
Unknown	2	2	0

**NEW BUSINESS**

**Standard:** Company rules pertaining to rating, credits/debits, scheduled modifications, documentation of modifications, and rating for modification for multiple locations are in compliance with applicable statutes, rules, and regulations. ORC 3937.03 requires, in part, that every insurer file every form of a policy, endorsement, rider, manual of classifications, rules, rates, every rating plan, and every modification of any of them, which the insurer proposes to use.

**Test:** Did the Company correctly calculate the premiums in accordance with the rates, credits/debits, and scheduled modifications on file with the Department?

**Findings:**

	Population	Yes	No
Territory 1	120	50	0
Territory 2	63	50	0
Territory 3	135	50	0
Territory 4	34	34	0
Territory 5	34	34	0

**IN-FORCE BUSINESS**

**Standard:** Were Company rules pertaining to the underwriting requirements of in-force policies in compliance with applicable statutes, rules, and regulations?

**Test:** Did the Company adhere to the requirements of their underwriting guidelines and the rates and rules filed with the Department?

**Findings:**

	Population	Yes	No
Territory 1	316	50	0
Territory 2	249	50	0
Territory 3	426	50	0
Territory 4	52	52	0
Territory 5	101	50	0

## CANCELLATIONS

**Standard:** Cancellations comply with policy provisions, statutes, rules, and regulations. Specifically, ORC 3937.25(C) states, in part, that no less than 30 days notice must be given when a policy is being cancelled for a reason other than non-payment of premium if that policy has been in effect for more than ninety days. If a policy is cancelled for non-payment of premium, the notice requirement is ten days.

**Test:** Did the Company comply with the cancellation requirements of ORC 3937.25(C)?

**Findings:**

	Population	Yes	No
Territory 1	59	59	0
Territory 2	32	32	0
Territory 3	104	50	0
Territory 4	20	20	0
Territory 5	7	7	0

## NON-RENEWALS

**Standard:** Company rules pertaining to non-renewal notices are in compliance with an Ohio Department of Insurance (“Department”) memorandum, applicable statutes, rules, and regulations, including ORC 3937.26.

**Test:** Did the Company provide 60 days notice when non-renewing a policy?

**Findings:**

	Population	Yes	No
Territory 1	184	50	0
Territory 2	125	50	0
Territory 3	516	50	0
Territory 4	40	40	0
Territory 5	26	26	0

**Note:** On August 16, 2002, the Department asked Medical Malpractice insurers to provide additional notice to its insureds when a policy is not going to be renewed. This memorandum was issued as a result of deteriorating market conditions. In response, the Company agreed to provide 60 days notice to its insureds prior to non-renewal.

**EXAMINERS OBSERVATIONS AND RECOMMENDATIONS****Nursing Home Exposures**

As part of this examination, the Examiners reviewed Nursing Home Exposures for physicians and surgeons. As a general guideline, the Company writes and renews private practice physicians who continue to follow their established patients when their patients move to a nursing home or other long-term healthcare facility. The Company primarily insures individual physicians so they generally will not write healthcare facilities or doctors with healthcare facility exposure. For instance, a doctor serving as a Medical Director for a long-term care facility will not be eligible for coverage in the Company's physicians and surgeons programs.

**Statistical Agents**

The Company does not report statistical data to insurance departments (other than annual/quarterly financial statements and special data calls).

Recommendation:

The Examiners recommend the Company submit its statistical data annually to a Department designated statistical agent as required by ORC 3937.12.

**Communication Skills Assessment (CSA)**

The CSA is a three-page communication skills assessment that all new physicians must complete when applying for coverage with the Company. Beginning in January 1, 2003, all physicians are required to take the self-assessment before receiving a renewal quote. The assessment is scored by a vendor and if the score is high enough the physician receives a 3% credit. If the score is mid-range then the physician is given “underwriter discretion”. If the score is low then the score given is “do not accept”. This CSA credit is applied through either the schedule rating or the “Professional Skills/Quality of Care or Risk Management”.

Beginning January 1, 2003 the risk management unit began conducting “on-site” inspections of physicians offices to determine the acceptability of a risk. A physician passing the on-site inspection receives a 2% credit. A physician that passes the on-site and the CSA receives a 5% credit. The written instructions indicate that the on-site inspection is used only when additional information is needed to determine the acceptability of the risk. Currently, the CSA credit and the on-site inspection credit are being used as schedule credits. The schedule rating plan does not appear to include risk characteristics that incorporate the CSA and on-site.

Recommendation:

The Examiners recommend that since both the CSA and the on-site inspection have rating implications, either a separate rule should be filed with the Department explaining how CSA and the on-site inspection are used in determining risk acceptability, and when the credit is given. An alternative would be for the Company to modify the Schedule Rating Plan to include specific risk characteristics for the CSA and on-site inspection.

**File Documentation**

In several instances, claims free-credits, practice credits, schedule rating plan, and/or surcharges were applied inconsistently with little or no documentation in the file. In some cases, worksheets documenting premium calculations and modifier applications were not in the policies renewed during calendar year 2002. In 2003, worksheets were used more consistently for premium calculations but the use of modifiers was not documented consistently.

Recommendation:

The Examiners recommend that the Company develop procedures, forms, and internal controls to ensure that consistent file documentation is used to document the underwriting process and application of risk modifications (schedule rating) and/or individual risk rating plans are in compliance with ORC 3937.03(E), OAC 3901-1-22, and Bulletin 2000-3.

**Schedule Rating**

Schedule rating did not appear to be used consistently. In some cases, both a schedule credit and a claims free discount were given. Giving a schedule credit for “no losses” appears to be non compliant with OAC 3901-1-22 (C). Several files did not include any documentation, of the reasons for a credit or, the reason for reducing or removing a modifier on renewal. When the reasons for modifiers were documented, the reasons given by the underwriter did not follow the filed risk characteristics.

Recommendation

The Examiners recommend that scheduled modifiers be accurately documented when added, changed, or removed from the policy.

**Additional Information**

A mandatory request for additional information, beyond the specified examination period, was sent to the Company. This data request pertained to underwriting guidelines, non-renewals, cancellations and quotes given and accepted for the months of October 2003 through February

2004. The requested information was provided by the Company and reviewed by the Examiners. The Examiners concluded that the Company was following their underwriting guidelines.

### CONCLUSION

This concludes the report of Examination by Market Conduct Division of the American Physicians Assurance Corporation. The Examiners, Rodney Beetch, Stan Garlington, Roger Hinkle, Robert Kelley, Angela Dingus, and Cheryl Davis would like to acknowledge the assistance and cooperation provided by the management and the employees of the Company.

  
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Rodney E Beetch  
Examiner in Charge

  
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Date