

SEP 9 1994

STATE OF ARIZONA

DEPARTMENT OF INSURANCE

DEPARTMENT OF INSURANCE  
By alc

In the Matter of:

EQUITABLE LIFE AND CASUALTY INSURANCE COMPANY

Respondent

) Docket No. 8546

) CONSENT ORDER

A market conduct examination was made of Equitable Life and Casualty Insurance Company, hereinafter referred to as "Equitable", by a Market Conduct Examiner for the Arizona Department of Insurance ("ADOI") covering the time period from January 1, 1989 to April 30, 1992. Based upon the examination results, it is alleged that Equitable has violated the provisions of Arizona Revised Statutes, Title 20, Sections 20-461, 20-462, 20-1113, 20-2110 and Arizona Administrative Code Rules ("A.A.C. R") 4-14-213, 4-14-215, 4-14-606 {Now 4-14-1114}, 4-14-801 and 4-14-1112. Equitable wishes to resolve this matter without formal adjudicative proceedings and hereby agrees to a Consent Order.

The Director of Insurance of the State of Arizona ("the Director") enters the following Findings of Fact, and Conclusions of Law, which are neither admitted nor denied by Equitable, and the following Order:

FINDINGS OF FACT

1. Equitable is authorized to transact life and disability insurance as an insurer pursuant to a Certificate of Authority issued by the Director.

2. The Examiner was authorized by the Director to conduct a market conduct examination of Equitable and has prepared the Report of Examination of the Market Conduct Affairs of Equitable

1 ("the Report"). The period covered by the on-site examination  
2 was concluded as of April 30, 1992.

3 3. The Examiner reviewed fourteen (14) complaints made to  
4 the ADOI concerning Equitable during the time frame of the  
5 Examination. As to these, Equitable:

6 a. through its agent, Ron Yates, sold and the  
7 company issued two (2) medicare supplement policies, which  
8 duplicated benefits of a previously issued policy. The insured  
9 thought she was purchasing long term care policies, but it was  
10 discovered that the policies were medicare supplement policies  
11 which provided the same coverage as an in-force Mutual  
12 Protective Insurance Company policy which was paid to July 1991.

13 b. failed to give to one (1) proposed insured the  
14 specific reasons for declining to issue the policy to the  
15 insured.

16 c. failed to pay claims in a consistent manner on  
17 Policy #2759653 for oxygen which had been ordered by the  
18 insured's attending physician. In some instances, claims for  
19 both the oxygen and delivery equipment were paid. In other  
20 instances, only claims for the oxygen were considered and in  
21 others the claim was denied.

22 4. The Examiner reviewed ten (10) of the forty-eight (48)  
23 life policies issued during the period covered by the  
24 Examination. Of these:

25 a. Equitable's agents failed to submit statements of  
26 the agents regarding replacement of existing life insurance  
27 coverage with six (6) applications, and Equitable failed to  
28 require that such statements be submitted.

1           b. Equitable's agents failed to submit statements of  
2 the insureds regarding replacement of existing life insurance  
3 coverage with two (2) applications, and Equitable failed to  
4 require that such statements be submitted.

5           c. Equitable failed to include on application forms  
6 A-990(AZ), A-880(89) and A-880(Rev.) the replacement questions  
7 which should be directed to both the proposed insured and the  
8 agent concerning the replacement of existing life insurance.

9           d. Equitable failed to include on application forms  
10 A-93 and LA-44 the replacement questions which should be  
11 directed to the agent concerning the replacement of existing  
12 life insurance.

13           5. The Examiner reviewed ten (10) Arizona life claims out  
14 of a population of sixty-one (61) paid or denied by Equitable  
15 during the period covered by the Examination. As to these,  
16 Equitable failed to:

17           a. acknowledge the receipt of a notification of  
18 claim within ten (10) working days on five (5) claims.

19           b. accept or deny two (2) claims within fifteen (15)  
20 working days after the receipt of properly executed proofs of  
21 loss.

22           c. pay one (1) claim within thirty (30) days after  
23 receipt of acceptable proofs of loss which contained all  
24 information necessary for claim adjudication.

25           d. complete the investigation of one (1) claim  
26 within thirty (30) days after notification of the claim.

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1 e. notify the first party claimant within fifteen  
2 (15) working days after receipt of proofs of loss giving the  
3 reasons more time is needed to accept or deny two (2) claims.

4 6. The Examiner reviewed 100 Arizona accident and health  
5 issued policies out of a population of 3,241 accident and health  
6 policies issued by Equitable during the period covered by the  
7 Examination. As to these, Equitable:

8 a. failed to obtain the replacement supplement form  
9 required after November 19, 1990 for three (3) medicare  
10 supplement policies, #2980232, #2979387 and #2977462, issued  
11 after November 19, 1990 when the application was taken prior to  
12 that date.

13 b. failed to use on five (5) medicare supplement  
14 policies an application which asked all the questions required  
15 regarding replacement, including whether the insured was covered  
16 by medicaid, the insured's intention to replace coverage and the  
17 agent's response to the question of previous sales of health  
18 insurance policies to the applicant.

19 c. failed to obtain on medicare supplement Policy  
20 #2990333 the answer to the questions concerning other health  
21 policies still in force and other health insurance policies sold  
22 to the applicant which were no longer in force.

23 d. issued five (5) medicare supplement policies  
24 where first-year commissions were paid on these policies even  
25 though replacement of existing health insurance was involved,  
26 and the first year and renewal commission schedule was not in  
27 conformity with A.A.C. R4-14-606(I)(1), (2) and (3) {Now A.A.C.  
28 R4-14-1112(A), (B) and (C)}.

1 e. issued two (2) medicare supplement policies in  
2 which the first year commission was more than 200% of the  
3 renewal commission.

4 f. issued eight (8) medicare supplement policies  
5 where the commission schedules had two (2) levels of renewal  
6 commissions rather than the one (1) level permitted.

7 g. issued seven (7) medicare supplement policies  
8 when a comparison statement comparing existing coverage to the  
9 proposed replacement coverage was not submitted in connection  
10 with the applications when replacement of existing coverage was  
11 indicated on the application.

12 7. The Examiner reviewed twenty-six (26) Arizona accident  
13 and health declined application files out of a population of 381  
14 accident and health application files declined by Equitable  
15 during the period covered by the Examination. As to these,  
16 Equitable:

17 a. declined coverage on one (1) application because  
18 the spouse's personal physician issued a report that stated that  
19 the applicant had either severely impaired vision or was totally  
20 blind. Furthermore, the declination letter sent to the applicant  
21 did not inform the applicant of his right to request the  
22 specific reason for the declination and of his right to a  
23 correction, deletion or amendment of any information the  
24 applicant believes to be incorrect.

25 b. sent three (3) declination letters to proposed  
26 insureds after October, 1991 which did not inform the proposed  
27 insured of his right to request the specific reason for the  
28 declination in compliance with A.R.S. § 20-2110(A).

1           8. The Examiner reviewed 197 Arizona accident and health  
2 claims out of a population of 38,277 which were paid by  
3 Equitable during the period covered by the Examination. As to  
4 these, Equitable failed to:

5           a. acknowledge the receipt of seventy-two (72)  
6 claims within ten (10) working days.

7           b. accept or deny thirty-six (36) claims within  
8 fifteen (15) working days after the receipt of properly executed  
9 proofs of loss.

10           c. pay seven (7) claims within thirty (30) days  
11 after receipt of acceptable proofs of loss which contained all  
12 information necessary for claim adjudication and failed to pay  
13 interest thereon.

14           d. complete the investigation of five (5) claims  
15 within thirty days after notification of a claim unless such  
16 investigation cannot reasonably be completed within such time.

17           e. notify thirty-seven (37) claimants within fifteen  
18 (15) working days after receipt of proofs of loss that it would  
19 need more time to determine whether the claims should be  
20 accepted or denied.

21           9. The Examiner reviewed ninety-five (95) accident and  
22 health claims out of a population of 8,023 which were closed by  
23 Equitable without payment during the time period covered by the  
24 examination. Of these claims, Equitable failed to:

25           a. acknowledge thirty-nine (39) claims within ten  
26 (10) working days of receipt.

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1           b. accept or deny twenty-two (22) claims within  
2 fifteen (15) working days after the receipt of properly executed  
3 proofs of loss.

4           c. complete the investigation of three (3) claims  
5 within thirty (30) days after notification of a claim unless  
6 such investigation cannot reasonably be completed within such  
7 time.

8           d. notify twenty-two (22) claimants within fifteen  
9 (15) working days after receipt of proofs of loss that it would  
10 need more time to determine whether the claims should be  
11 accepted or denied.

12                                   CONCLUSIONS OF LAW

13           1. By issuing medicare supplement policies through its  
14 agent which duplicated benefits of a previously issued policy,  
15 Equitable violated A.A.C. R4-14-606(C)(1)(h) and A.R.S.  
16 § 20-1133.

17           2. By failing to give proposed insureds the specific  
18 reasons for declining to issue policies, Equitable violated  
19 A.R.S. § 20-2110(A).

20           3. By failing to pay claims in a consistent manner for  
21 oxygen which had been ordered by the insured's attending  
22 physician, Equitable violated A.A.C. R4-14-801(D)(1) and A.R.S.  
23 § 20-461(A)(1).

24           4. By failing to submit signed statements with  
25 applications for replacement of life insurance as to whether or  
26 not the agent knows replacement is or may be involved in the  
27 transactions, Equitable's agents violated A.A.C.  
28 R4-14-215(E)(1)(b) and Equitable violated R4-14-215(F)(2).

1           5.       By failing to submit the applicants' signed  
2 statements with applications for replacement of life insurance  
3 as to whether or not replacement is or may be involved in the  
4 transactions,       Equitable's       agents       violated       A.A.C.  
5 R4-14-215(E)(1)(a) and Equitable violated R4-14-215(F)(2).

6           6.       By failing to include on application forms A-990(AZ),  
7 A-880(89) and A-880(Rev.) the replacement questions which should  
8 be directed to both the proposed insured and the agent  
9 concerning the replacement of life insurance, Equitable violated  
10 A.A.C. R4-14-215(E)(1)(a) and (b).

11           7.       By failing to include on application forms A-93 and  
12 LA-44 the replacement questions which should be directed to the  
13 agent concerning the replacement of existing life insurance,  
14 Equitable violated A.A.C. R4-14-215(E)(1)(b).

15           8.       By failing to acknowledge notification of claims or  
16 pay the claims within ten (10) working days of their receipt,  
17 Equitable violated A.A.C. R4-14-801(E)(1) and A.R.S. §  
18 20-461(A)(2).

19           9.       By failing to advise claimants of the acceptance or  
20 denial of their claims within fifteen (15) working days after  
21 receiving receipt of properly executed proofs of loss, Equitable  
22 violated A.A.C. R4-14-801(G)(1)(a) and (b) and A.R.S. §  
23 20-461(A)(5).

24           10.      By failing to pay claims within thirty (30) days after  
25 the receipt of proofs of loss which contained all information  
26 necessary for claim adjudication, and failing to pay interest on  
27 the amount due, Equitable violated A.R.S. § 20-462(A).

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1 11. By failing to complete the investigation of claims  
2 within thirty (30) days of notification of the claim unless such  
3 investigation cannot reasonably be completed within such time,  
4 Equitable violated A.A.C. R4-14-801(F) and A.R.S. § 20-461(A)(2).

5 12. By failing to notify claimants within fifteen (15)  
6 working days after proofs of loss that it would need more time  
7 to determine whether the claims should be accepted or denied,  
8 Equitable violated A.A.C. R4-14-801(G)(1)(b) and A.R.S.  
9 § 20-461(A)(2)

10 13. By failing to use in all medicare supplement  
11 applications the replacement medicare supplement form required  
12 after November 19, 1990, Equitable violated A.A.C.  
13 R4-14-606(4)(d) {Now A.A.C. R4-14-1114(A)} and A.R.S. § 20-1133.

14 14. By failing to use on medicare supplement policies an  
15 application which asked all questions required by A.A.C.  
16 R4-14-1114 regarding replacement, Equitable violated A.A.C.  
17 R4-14-606(C)(4)(a) and (b) {Now A.A.C. R4-14-1114(A)} and A.R.S.  
18 § 20-1133.

19 15. By failing to obtain from all applicants for medicare  
20 supplement policies answers to the questions required by A.A.C.  
21 R4-14-606(C)(4)(b)(i) and (ii) {Now A.A.C. R4-14-1114(A)}  
22 regarding other health policies still in force and other health  
23 policies sold to the applicant which were no longer in force,  
24 Equitable violated A.A.C. R4-14-606(C)(4)(b)(i) and (ii) {Now  
25 A.A.C. R4-14-1114(A)} and A.R.S. § 20-1133.

26 16. By paying commissions on medicare supplement policies  
27 not in conformance with regulation, Equitable violated A.A.C.

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1 R4-14-606(I)(1),(2) and (3) {Now A.A.C. R4-14-1112(A) and (B) }  
2 and A.R.S. § 20-1133.

3 17. By issuing medicare supplement policies where a  
4 comparison statement was not submitted with the applications  
5 when replacement of existing coverage was indicated, Equitable  
6 violated A.A.C. R4-14-606(J)(1)(a),(b) and (c) {Now A.A.C.  
7 R4-14-1116(A)} and A.R.S. § 20-1133.

8 18. By declining coverage to a proposed insured because he  
9 is blind or has extremely impaired vision, Equitable violated  
10 A.A.C. R4-14-213(B).

11 19. Grounds exist for the entry of the following order.

12 ORDER

13 Equitable having admitted the jurisdiction of the Director  
14 to enter the Order set forth herein, having waived the Notice of  
15 Hearing and the hearing, having waived any and all rights to  
16 appeal this Order, and having consented to the entry of the  
17 Order set forth hereinafter, and there being no just reason for  
18 delay:

19 IT IS HEREBY ORDERED THAT:

20 1. Equitable shall continue to acknowledge notification  
21 of claims within ten (10) working days of their receipt;  
22 continue to notify insureds of the acceptance or denial of  
23 claims within fifteen (15) working days of receipt of properly  
24 executed proofs of loss; continue to either pay claims within  
25 thirty (30) days after receipt of a proof of loss which contains  
26 all information necessary for claim adjudication, or pay  
27 interest on the claims from the date the claim was received by  
28 Equitable; continue to pay claims in the exact amounts due

1 pursuant to the terms of its policies; continue complying with  
2 the provisions of A.A.C. R4-14-215 including statements  
3 concerning replacement from applicants and agents; continue  
4 using applications for life insurance which provide for the  
5 answering of replacement questions by the applicants and agents;  
6 continue to use the replacement supplement form on medicare  
7 supplement policies; continue using applications for medicare  
8 supplement policies which ask the questions regarding  
9 replacement required by A.A.C. R4-14-1114; continue to obtain  
10 from applicants and agents for medicare supplement policies  
11 applications the information required by A.A.C. R4-14-1114  
12 concerning other health policies; continue to pay commissions on  
13 medicare supplement policies in accordance with A.A.C.  
14 R4-14-1112; continue to obtain the statement comparing the  
15 replacement coverage to the existing coverage when replacement  
16 is contemplated on a medicare supplement policy; continue to  
17 respond to inquiries regarding claims sent by the ADOI within 15  
18 working days; continue completing the investigation of claims  
19 within thirty (30) days after notification of the claim;  
20 continue to notify a first party claimant within fifteen (15)  
21 working days after receipt of proofs of loss giving the reasons  
22 more time is needed to accept or deny claims; cease from  
23 declining coverage on medicare supplement policies because of  
24 blindness; continue to specify the reasons for declining to  
25 issue policies and from issuing medicare supplement policies  
26 which duplicate benefits under a previously issued policy.

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1           2.    Within thirty (30) days of the filed date of this  
2 Order, Equitable shall file with the Director an action plan, to  
3 include a bulletin acceptable to the Director, for training all  
4 agents representing Equitable in Arizona as to the legal  
5 requirements for replacement of life insurance and medicare  
6 supplement insurance. This plan shall include training in the  
7 provisions of A.A.C. R4-14-215 and A.A.C. R4-14-1114.

8           3.    Equitable shall develop a written action plan to  
9 monitor and ensure that its personnel process claims in  
10 accordance with A.R.S. §§ 20-461, 20-462, and A.A.C. R4-14-801.  
11 Equitable shall submit copies of the action plan to the ADOI for  
12 approval within thirty (30) days of the filed date of this Order.

13           4.    Equitable shall pay to the following insureds,  
14 Accident and Health Claim #883099, #812668, #1816446, #843166,  
15 #1011582, #993571, #427700 and Life Claim #517434, interest on  
16 the amounts of the claims unpaid on the 30th day after  
17 Equitable's receipt of proofs of loss containing all information  
18 necessary for claims adjudication. Interest shall be paid at  
19 the rate of ten percent (10%) per annum calculated from the date  
20 the claim was received by the insured to the date the claim was  
21 paid. These payments shall be accompanied by a letter to the  
22 insureds acceptable to the Director. A list of payments, giving  
23 the name and address of each party to whom they were made, the  
24 base amount, the amount of interest paid or credited, and the  
25 date of payment shall be provided to the ADOI within sixty (60)  
26 days of the filed date of this Order.

27           5.    The ADOI shall be permitted, through an authorized  
28 representative, to verify that Equitable has complied with all

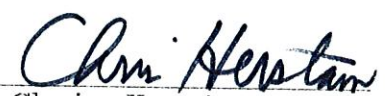
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provisions of this Order, and the Director may separately order Equitable to comply.

6. Equitable shall pay a civil penalty of NINE THOUSAND DOLLARS (\$9,000.00) to the Director for remission to the State Treasurer for deposit in the State General Fund in accordance with A.R.S. § 20-220(B). Said \$9,000.00 shall be provided to the Hearing Division of the ADOI on or before August 30, 1994.

7. The Report of Market Conduct Examination as of April 30, 1992 to include the objections to the Report by Equitable, shall be filed with the ADOI.

DATED at Phoenix, Arizona this 9th day of September, 1994.

  
Chris Herstam  
Director of Insurance

1  
2 CONSENT TO ORDER

3 1. Respondent, Equitable Life and Casualty Insurance  
4 Company, has reviewed the foregoing Order.

5 2. Respondent is aware of its right to a hearing at which  
6 hearing Respondent may be represented by counsel, present  
7 evidence and cross-examine witnesses. Respondent has irrevocably  
8 waived its right to such public hearing and to any court appeals  
9 relating thereto.

10 3. Respondent admits the jurisdiction of the Director of  
11 Insurance, State of Arizona, and consents to the entry of this  
12 Order.

13 4. Respondent states that no promise of any kind or nature  
14 whatsoever was made to induce it to enter into this Order and  
15 that it has entered into this Order voluntarily.

16 5. It is acknowledged and agreed by the Respondent on the  
17 one hand and the Department on the other hand, that entry of this  
18 Consent Order is not an admission of any fault or liability  
19 whatsoever by Respondent or any person, firm, corporation or  
20 association, but is entered into to settle the disputed  
21 contentions hereinabove referenced. This Consent Order shall not  
22 be treated as an admission or liability of any kind for any  
23 purpose.

24 6. Respondent acknowledges that the acceptance of this  
25 Order by the Director of Insurance, State of Arizona, is solely  
26 for the purpose of settling this litigation against it and does  
27 not preclude any other agency or officer of this state or  
28 subdivision thereof from instituting other civil or criminal  
proceedings as may be appropriate now or in the future.

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7. E Rod Ross represents that as  
President he is an officer of Equitable Life  
and Casualty Company, and that as such, he has been authorized by  
it to enter into this Order for and on its behalf.

EQUITABLE LIFE AND CASUALTY INSURANCE COMPANY

8/31/94 BY [Signature]  
(Date)

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COPY of the foregoing mailed/delivered  
this 9th day of September, 1994, to:

- Gay Ann Williams  
Deputy Director
- Gregory Y. Harris  
Chief Administrative Law Judge
- Erin Klüg  
Manager  
Market Conduct Examinations Division
- Saul Saulson  
Supervisor  
Examinations Section
- Shirley Polzin  
Supervisor  
Life and Disability Section
- Deloris E. Williamson  
Assistant Director  
Rates & Regulations Division
- Gary Torticill  
Assistant Director and Chief Financial Examiner  
Corporate & Financial Affairs Division
- Ron Watkins  
Assistant Director  
Consumer Services and Investigations
- Mary Butterfield  
Manager  
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