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JUN 25 2012

OFFICE OF INSURANCE REGULATION
Docketed by: [signature]

OFFICE OF INSURANCE REGULATION

KEVIN M. MCCARTY
COMMISSIONER

IN THE MATTER OF: CASE NO.: 124288-12

GUARANTEE TRUST LIFE INSURANCE COMPANY,
_______________________________________/

FINAL ORDER

THIS CAUSE came on before the undersigned for consideration and final agency action.

On January 12, 2011, the Florida Office of Insurance Regulation (hereinafter "Office") filed an Administrative Complaint against Guarantee Trust Life Insurance Company (hereinafter "GTL") alleging violations of various provisions of the Florida Insurance Code, directing GTL to cease and desist, and ordering GTL to show cause as to why its certificate of authority should not be suspended or revoked and why penalties should not be imposed.

GTL requested a formal administrative hearing pursuant to Section 120.57(1), Florida Statutes, and the matter was referred to the Division of Administrative Hearings on March 3, 2011. The Office filed an Unopposed Motion to Amend Notice and Order to Show Cause on September 1, 2011, which was granted. On November 15, 2011, GTL filed a Petition to Challenge Unadopted Rule against the Financial Services Commission and the Office of Insurance Regulation alleging that the Amended Notice and Order to Show Cause contained a policy statement of general applicability. GTL's Motion to Consolidate was granted on December 7, 2011. The matter was heard before the Honorable F. Scott Boyd, Administrative Law Judge (hereinafter "ALJ"), on December 12, 2011, in Tallahassee, Florida.

Filed June 28, 2012 1:38 PM Division of Administrative Hearings

After consideration of the evidence, argument, and testimony presented at the hearing, the ALJ issued his Recommended Order on March 16, 2012. (Attached hereto as Exhibit "A"). The ALJ recommended that the Office enter a Final Order finding that GTL committed 216 knowing and willful violations of Section 626.9521(1), Florida Statutes, for engaging in an unfair method of competition and unfair or deceptive act or practice as defined in Section 626.9541(1)(b), Florida Statutes, and impose a fine of one thousand U.S. Dollars ($1,000) for each such violation, for a total fine not to exceed an aggregate amount of two hundred thousand U.S. Dollars ($200,000).

Both GTL and the Office filed exceptions to the Recommended Order. GTL filed a response to the Office's exceptions. Based upon a complete review of the record, the Recommended Order and all exceptions and responses thereto, and the relevant statutes, rules, and case law, the Office finds as follows:

RULINGS ON EXCEPTIONS TO FINDINGS OF FACT

Section 120.57(1)(l), Florida Statutes, sets forth the standard an agency must use when reviewing the Recommended Order of the ALJ. As it relates to exceptions to findings of fact, it provides in pertinent part:

> The agency may adopt the recommended order as the final order of the agency. ... The agency may not reject or modify the findings of fact unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law.

The ALJ is allowed latitude to make factual findings and draw reasonable inferences that flow therefrom. The law is well established that an agency is bound to honor a hearing officer's [now ALJ's] findings of fact unless they are not supported by competent, substantial evidence. McDonald v. Dep't of Banking & Fin., 346 So. 2d 569, 578 (Fla. 1st DCA 1977). It is the

hearing officer's function to consider all the evidence, resolve conflicts, judge credibility of witnesses, draw permissible inferences from the evidence, and reach ultimate findings of fact based on competent, substantial evidence; the agency is not authorized to perform these functions or otherwise interpret the evidence to fit its desired ultimate conclusion. Heifetz v. Dep't of Bus. Reg., 475 So. 2d 1277, 1281 (Fla. 1st DCA 1985). Accord Wash & Dry Vending Co. v. Dep't of Bus. Reg., 429 So. 2d 790, 792 (Fla. 3d DCA 1983) (agency may not substitute its judgment for that of the hearing officer by taking a different view of or placing greater weight on the same evidence).

RULINGS ON GTL'S EXCEPTIONS TO FINDINGS OF FACT

1. GTL excepts to the third sentence of Finding of Fact #18, which states that "GTL did not intend to offer a conversion policy to Members whose coverage under the policy was being terminated," as not being supported by competent substantial evidence. Evidence shows that at the time the Termination Letter was disseminated, GTL did not intend to offer a conversion policy to Members whose coverage under the policy was being terminated. (Joint Exhibits 3-5; Tr. 28-29, 44-49, 51, 66-69, 105-107). Furthermore, as discussed above, given the discretion vested in the ALJ with respect to making factual findings and drawing reasonable inferences that flow therefrom, there is competent substantial evidence in the record to support this finding. Accordingly, this exception is rejected.

2. GTL excepts to the fourth sentence of Finding of Fact #18, which states that "GTL knew that it did not have coverage with Celtic to provide converted policies." GTL maintains that the term "coverage" is inappropriate as Celtic is not a reinsurer with respect to the conversion obligation. While the word "coverage" may not be the most precise word to convey the proposal by Celtic to make its Conversion Program available to GTL and its Florida insureds,

factually the Finding is supported by competent substantial evidence. GTL also maintains that it had ultimately secured an agreement with Celtic to provide conversion policies to Members who requested it. Evidence shows that GTL and Celtic had discussed entering into a subsequent arrangement with Celtic to provide conversion to GTL's Members; however, no evidence shows that GTL ultimately secured an agreement with Celtic. (Joint Exhibit 8; Tr. 116-117). Furthermore, given the discretion vested in the ALJ with respect to making factual findings and drawing reasonable inferences that flow therefrom, there is competent substantial evidence in the record to support this finding. Accordingly, this exception is rejected.

3. GTL excepts to the last sentence of Finding of Fact #18, which states that GTL knew the Termination Letter was misleading, as lacking any competent substantial evidence in the record. Though perhaps not directly supported by evidence adduced at the hearing, this assertion is a reasonable factual deduction from the evidence that was submitted. Furthermore, given the discretion vested in the ALJ with respect to making factual findings and drawing reasonable inferences that flow therefrom, there is competent substantial evidence in the record to support this finding. Accordingly, this exception is rejected.

4. GTL excepts to the first sentence of Finding of Fact #33, which states that GTL reached an "understanding" with Celtic that Celtic would provide conversion coverage. GTL argues that this agreement was not an "understanding" rather an offer from Celtic that was accepted by GTL. Evidence shows that Celtic and GTL discussed via e-mail that Celtic was interested in making its Conversion Program available to GTL and its Florida insureds in April and May of 2011. (Joint Exhibit 8). However, the email was intended only as a brief outline of a proposed agreement. (Joint Exhibit 8, p. 5). Evidence does not show that this proposed agreement was accepted by GTL or that a contract was ever entered into between GTL and

Celtic at this time. Though the word "understanding" may not be the most precise word to convey the proposed agreement between GTL and Celtic, factually the Finding is supported by competent substantial evidence. Accordingly, this exception is rejected.

5. GTL excepts to Finding of Fact #35 which states:

> GTL chose not to send any notice to terminated Members in an effort to eliminate or minimize the possibility that Members might request conversion policies, and so avoid the costs of contracting with Celtic to provide the conversion coverage. GTL was hoping that the Members were unaware of their conversion rights, and would not become aware of them.

GTL maintains that no testimony or evidence was presented to support this finding of fact and that these findings of fact are based upon pure conjecture. Though perhaps not directly supported by evidence adduced at the hearing, this assertion is a reasonable factual deduction from the evidence that was submitted. Furthermore, as discussed above, the ALJ is allowed latitude to make factual findings and draw reasonable inferences that flow therefrom. Accordingly, this exception is rejected.

6. GTL excepts to Finding of Fact #36, which states that at no time from the inception of the Policy through the time the Termination Letters were sent, did GTL have in effect any written contract with Celtic or any other insurer to issue converted policies to Members upon GTL's termination of the Policy group coverage. GTL maintains that an offer was made by Celtic to provide conversion policies and that this offer was accepted by GTL, thus forming a contract under Florida Law. For the same reasons as articulated above in Paragraphs 1, 2 and 4, this exception is rejected.

7. GTL excepts to a portion of Finding of Fact #39, which states that GTL could not reasonably have interpreted the phrase "without offering converted policies" in Counts I and II in a way that would have hindered its ability to prepare a defense to Counts I and II. GTL maintains

that this portion of the Finding of Fact lacks any competent substantial evidence in the record. Given the discretion vested in the ALJ with respect to making factual findings and drawing reasonable inferences that flow therefrom, there is competent substantial evidence in the record to support this finding. Accordingly, this exception is rejected.

8. GTL excepts to the portion of Finding of Fact #42, which states in pertinent part:

> Although technically true, the statement was nevertheless likely to mislead a reasonable Member, because it made no mention that GTL was legally required to arrange for another provider to offer the conversion policy on GTL's behalf. The statement that GTL would no longer be offering major medical type coverage, omitting any further information, would leave the incorrect impression with a reasonable Member that the right to a conversion policy upon termination, as set forth in the certificate of health insurance, no longer existed. GTL knew that this statement was misleading as to a reasonable Member.

GTL maintains that there is no evidence that the true statement that GTL would no longer be offering major medical coverage in Florida was deceiving or that it deceived anyone. Though perhaps not directly supported by evidence adduced at the hearing, this assertion is a reasonable factual deduction from the evidence that was submitted. Furthermore, given the discretion vested in the ALJ with respect to making factual findings and drawing reasonable inferences that flow therefrom, there is competent substantial evidence in the record to support this finding. Accordingly, this exception is rejected.

9. GTL excepts to Finding of Fact #43, which states in pertinent part:

> Again, while not technically false, this statement was likely to mislead a reasonable Member, for none of these individuals was in fact eligible for a guaranteed-issue policy. GTL could easily have distinguished between Members and its individual policyholders in the letter, or better yet, sent two different letters, but it failed to do so. GTL instead chose to say only that readers "may be eligible" for a guaranteed issue policy and to include the reference to the Department's website list of other companies, without any mention of the converted policy available to a majority of recipients of the letter. This omission was likely to leave a reasonable Member eligible for a conversion policy with the incorrect impression that this right no longer existed. GTL knew that this statement was misleading.

GTL maintains that there is no evidence that this true statement contained in the termination notice was deceiving or that it deceived anyone. Though perhaps not directly supported by evidence adduced at the hearing, this assertion is a reasonable factual deduction from the evidence that was submitted. Furthermore, given the discretion vested in the ALJ with respect to making factual findings and drawing reasonable inferences that flow therefrom, there is competent substantial evidence in the record to support this finding. Accordingly, this exception is rejected.

10. GTL excepts to Finding of Fact #44, which states that GTL posed the question "WILL GTL BE OFFERING A REPLACEMENT PLAN?" in a fashion that was misleading. GTL maintains that there is no evidence that this true statement contained in the termination notice was deceiving or that it deceived anyone. Though perhaps not directly supported by evidence adduced at the hearing, this assertion is a reasonable factual deduction from the evidence that was submitted. Furthermore, given the discretion vested in the ALJ with respect to making factual findings and drawing reasonable inferences that flow therefrom, there is competent substantial evidence in the record to support this finding. Accordingly, this exception is rejected.

11. GTL excepts to Finding of Fact #50, which states that "[t]he Office proved by clear and convincing evidence that the statements in the Terminations Letter were made for the purpose of inducing, and tended to induce, the forfeiture of the conversion policy to which the Members were entitled under the policy." GTL maintains that there is no evidence that the true statements contained in the termination notice were deceiving or that it deceived anyone. For the reasons articulated above in paragraphs 8, 9 and 10, this exception is rejected.

12. GTL excepts to Finding of Fact #51, which states that "[t]he Office proved by clear and convincing evidence that the Termination Letter contained an assertion, representation and statement with respect to the business of insurance that was willfully deceptive and misleading. GTL knew, or should have known that this was an unfair or deceptive act or practice under the Florida Insurance Code." GTL maintains that there is no evidence that the true statements contained in the termination notice were deceiving or that it deceived anyone. As articulated above, it is the hearing officer's function to consider all the evidence, resolve conflicts, judge credibility of witnesses, draw permissible inferences from the evidence, and reach ultimate findings of fact based on competent, substantial evidence. Heifetz. For the reasons articulated above in paragraphs 8, 9, and 10, this exception is rejected.

RULINGS ON THE OFFICE'S EXCEPTIONS TO FINDINGS OF FACT

13. The Office excepts to Finding of Fact # 49, which states that "[t]he Office failed to prove by clear and convincing evidence that any statement in the Termination Letter was false." The Office maintains that this finding of fact is not based on competent substantial evidence and is contrary to the findings in Paragraph 7, 8, 15, and 16 of the Recommended Order. As articulated above, it is the hearing officer's function to consider all the evidence, resolve conflicts, judge credibility of witnesses, draw permissible inferences from the evidence, and reach ultimate findings of fact based on competent, substantial evidence. Heifetz. Given the discretion vested in the ALJ with respect to making factual findings and drawing reasonable inferences that flow therefrom, there is competent substantial evidence in the record to support this finding. Accordingly, this exception is rejected.

RULINGS ON EXCEPTIONS TO CONCLUSIONS OF LAW

14. GTL and the Office except to several of the ALJ's conclusions of law. Section 120.57(1)(l), Florida Statutes, sets forth the standard an agency must use when reviewing the legal conclusions in a Recommended Order:

> The agency may adopt the recommended order as the final order of the agency. The agency in its final order may reject or modify the conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction. When rejecting or modifying such conclusion of law or interpretation of administrative rule, the agency must state with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rule and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified. Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact.

GTL'S EXCEPTIONS TO CONCLUSIONS OF LAW

15. GTL excepts to Conclusion of Law #71, which states that GTL never entered into a binding contract with Celtic or any other insurer to provide conversion coverage in the event it exited from the Florida market. For the same reasons as articulated above in paragraphs 2, 4, and 6, this exception is rejected.

16. GTL excepts to Conclusion of Law #75, which states that there was no evidence at the hearing of an existence of an unadopted rule or generally applicable agency policy statement. Section 120.57(1)(e)1., Florida Statutes, states that an administrative law judge shall determine whether an agency statement constitutes an unadopted rule. It is not within the jurisdiction of the Office to modify or reject such a conclusion of law. Given the determinations made by the ALJ, this exception is rejected.

17. GTL excepts to Conclusion of Law #93, which states that deception, as it appears in Section 626.9541(1)(b), Florida Statutes, does not require that a false statement be made. GTL asserts that the Office is required to demonstrate that the termination notice contained false

statements that were made with the requisite scienter. Sun Like Assurance Company of Canada v. Land Concepts, Inc. 435 So. 2d 862, 863 (Fla. 5th DCA 2001), and Nagel v. Cronebaugh, 782 So. 2d 436, 439 (Fla. 5th DCA 2001). Section 626.9541(1)(b), Florida Statutes, defines false information and advertising as:

> Knowingly making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public ... an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of insurance, which is **untrue, deceptive, or misleading**. [Emphasis added].

Section 626.9541(1)(b), Florida Statutes, clearly states that in order for a publication to be considered false information or advertisement it must be untrue, deceptive, or misleading. Therefore, the ALJ is correct in his assessment that deception under Section 626.9541(1)(b), Florida Statutes, does not require that a false statement be made. Given the factual determinations made by the ALJ in this case, this exception is rejected.

18. GTL excepts to Conclusion of Law #94 for the same reasons articulated above in paragraph 17. Conclusion of Law #94 states in pertinent part that the Termination Letter contained assertions, representations and statements with respect to the business of insurance that were deceptive and misleading because they left the impression that a right to a conversion policy no longer existed, which, for eligible Members, was incorrect. For the reasons articulated above in paragraphs 8 through 12, this exception is rejected.

19. GTL excepts to Conclusion of Law #95, which states that while Section 6237.6675, Florida Statutes, contains no requirement that an insurer must remind group members of their conversion right upon termination, an insurer does remain bound by the requirements of Section 626.9541(1)(b), Florida Statutes. GTL maintains that, for the same reasons articulated above in paragraph 17, the Office is required to demonstrate that the termination notice

contained false statements that were made. For the reasons explained above, this exception is rejected.

20. GTL excepts to Conclusion of Law #97, which states the Office proved by clear and convincing evidence that GTL knowingly made, published, disseminated, and circulated the Termination Letter to 216 Members, which contained an assertion, representation and statement with respect to the business of insurance that was willfully deceptive and misleading. GTL knew, or should have known, that this was an unfair or deceptive act or practice under the Florida Insurance Code. GTL maintains that, for the reasons stated in Paragraph 17 above, this conclusion of law is clearly erroneous and should be rejected. For the reasons articulated above in Paragraphs 18 and 19, this exception is rejected.

21. GTL excepts to Conclusion of Law #106. GTL asserts that Section 624.310(5), Florida Statutes, bars any fine in any action initiated pursuant to Chapter 120 without "advance notice." GTL asserts that this advance notice requirement is not limited to fines imposed pursuant to Section 624.310(5), Florida Statutes. However, Section 624.310(7), Florida Statutes, states that the provisions of Section 624.310, Florida Statutes, are in addition to other provisions of the Florida Insurance Code and shall not be construed to curtail, impede, replace, or delete any other similar provision or the power of the Office. Thus, similar penalty provisions found in other sections of the Florida Insurance Code are not implicated by the "advance notice" provisions of Section 624.310(5), Florida Statutes. Accordingly, this exception is rejected.

22. GTL excepts to Conclusion of Law #107. GTL asserts that this conclusion of law is actually a restatement of factual findings that lack competent substantial evidence. The factual findings that GTL refers to are relied upon in recommending a penalty in this conclusion of law.

For reasons articulated above in paragraphs 1 and 2, the factual findings, do not lack competent substantial evidence. Accordingly, this exception is rejected.

23. GTL excepts to Conclusion of Law #108. GTL asserts that this conclusion of law is actually a restatement of factual findings that lack competent substantial evidence. For the same reasons articulated above in paragraph 3, the factual findings discussed in this conclusion of law do not lack competent substantial evidence. Accordingly, this exception is rejected.

24. GTL excepts to Conclusion of Law #111. GTL asserts that this conclusion of law is actually a restatement of factual findings that lack competent substantial evidence. For the same reasons articulated above in paragraph 5, the factual findings discussed in this conclusion of law do not lack competent substantial evidence. Accordingly, this exception is rejected.

RULINGS ON THE OFFICE'S EXCEPTIONS TO CONCLUSIONS OF LAW

25. The Office excepts to Conclusion of Law #64 and #65. Conclusion of Law #64 states that it is not clear from the language of Section 627.6675, Florida Statutes, at what point the duty arises for a group insurer to contract with another insurer to provide a conversion benefit in the case of withdrawal from the Florida market. Conclusion of Law #65 provides three possible interpretations of when the duty arises to contract with another insurer to provide the conversion benefit in the case of withdrawal from the Florida market, pursuant to Section 627.6675, Florida Statutes. The Office excepts to the third interpretation suggested by the ALJ – that the insurer must only enter into a contract "in time for it to be in force at the time the conversion policy actually needs to be issued." The Office is entitled to great deference in its interpretation of the statutes it administers. BellSouth Telecommunications, Inc. v. Johnson, 708 So.2d 696 (Fla. 1998). The agency is also entitled to define such terms as are found within these statutes. Pershing Indus., Inc. v. Dep't of Banking and Fin., 591 So. 2d 991, 993 (Fla. 1st DCA

1991). "It is axiomatic that an agency's construction of its governing statutes and rules will be upheld unless clearly erroneous....If an agency's interpretation is one of several permissible interpretations, it must be upheld despite the existence of reasonable alternatives." Id. Furthermore, "[t]he agency's interpretation need not be the sole possible interpretation or even the most desirable one; it need only be within the range of possible interpretations." Orange Park Kennel Club, Inc. v. Dep't of Bus. And Prof. Regulation, 644 So.2d 574, 576 (Fla. 1st DCA 1994) *citing* Pan Am. World Airways, Inc. v. Florida Pub. Serv. Comm'n, 427 So.2d 716 (Fla. 1983). Section 627.6675(1), Florida Statutes, gives an insured 63 days from the date of the termination of coverage under the group policy to make an application for, and pay the first premium toward the converted policy. Section 627.6675(4), Florida Statutes, says the effective date of the converted policy shall be the day following the termination of the insurance under the group policy. Given that the effective date of the converted policy is the day following the termination of coverage under the group policy, and that the application for the converted policy may be made at any time up to 63 days following the termination of coverage under the group policy, it would not be logical for the law to allow the insurer not to have the conversion policy available prior to the termination of the group policy. Additionally, Section 627.6675(17), Florida Statutes, gives an insurer 14 days to provide an outline of coverage to an individual interested in applying for a conversion policy. It would logically follow that such an insurer must have coverage available to comply with this provision. Otherwise, it would have no coverage to outline. Furthermore, pursuant to Section 627.6675(14), Florida Statutes, conversion is not only required when a company withdraws from a market, but also when a group member dies, in which case a conversion must be available to their spouse and children. This could be one day after the group policy (out-of-state group, in this case) becomes effective. This could also be one

day before the out-of-state group policy is terminated. As such, a conversion policy must be in place as a conversion obligation may unexpectedly materialize at any time during the existence of the out-of-state group policy. Moreover, Section 627.6515(2), Florida Statutes, requires that the policy provide conversion benefits as specified in Section 627.6675, Florida Statutes, If an insurer were not required to have such benefits available, then the law would have no meaning, as the inclusion of such benefit would be an empty and meaningless provision in a contract. For purposes of these conclusions of law, while it may not be clear as to the point in time at which the duty arises to contract with another insurer to provide conversion benefit, it is clear that a contract to provide conversion benefit must in place prior to the termination date of the policy in order to comply with the requirements of Section 627.6675, Florida Statutes. Accordingly, the exception is accepted and the conclusion is modified to reflect the above.

26. The Office excepts to Conclusion of Law #82, which states that the Termination Letter issued by GTL had no effect on either the requirement that the Policy and certificates contain a provision on conversion, or the requirement that GTL contract with another insurer to provide such coverage, because under the interpretation of Section 627.6675, Florida Statutes, most favorable to GTL, that requirement had not yet arisen. As stated by the ALJ in Paragraph 81 of the Recommended Order, the contractual and statutory obligation to offer conversion coverage cannot be erased or revoked, even by an ambiguous unilateral communication from GTL advising that the conversion coverage was no longer being offered. Section 627.6675, Florida Statutes, requires that certain language providing conversion coverage must be a part of a policy, and this language appears on the certificates issued to Members. While certain statements made in the Termination Letter issued by GTL may have been misleading, the ALJ is correct in his assessment as discussed above. Accordingly, this exception is rejected. However, the

exception should be modified in part to reflect, as discussed in paragraphs 25 above, that the language "because – under the interpretation of Section 627.6675 most favorable to GTL – that requirement had not yet arisen." be stricken from the record.

27. The Office also excepts to Conclusion of Law #83 which states that the Office failed to provide by clear and convincing evidence that GTL violated the Florida Insurance Code by issuing the Termination Letter without offering converted policies in violation of Section 627.6675, Florida Statutes. As articulated above, it is the hearing officer's function to consider all the evidence, resolve conflicts, judge credibility of witnesses, draw permissible inferences from the evidence, and reach ultimate findings of fact based on competent, substantial evidence. Heifetz. Further, the Office may not substitute its judgment for that of the hearing officer by taking a different view of or placing greater weight on the same evidence. Accord. Accordingly, this exception is rejected.

28. The Office excepts to the third sentence of Conclusion of Law #87. The Office excepts to the Black's Law Dictionary definition of "misrepresentation" cited by the ALJ. The Office maintains that Black's Law Dictionary (9th ed. 2009) defines "misrepresentation" as "the act of making a false or misleading assertion about something, usually with the intent to deceive." Furthermore, Black's Law Dictionary (9th ed. 2009) cites to Restatement (Second) of Contracts §159 cmt. A (1979) which states:

> A misrepresentation, being a false assertion of face, commonly takes the form of spoken or written words. Whether a statement is false depends on the meaning of the words in all the circumstances, including what may fairly be inferred from them. An assertion may also be inferred from conduct other than words. Concealment or even non-disclosure may have the effect of a misrepresentation... [A]n assertion need not be fraudulent to be a misrepresentation. Thus a statement intended to be truthful may be a misrepresentation because of ignorance or carelessness, as when the word 'not' is inadvertently omitted or when inaccurate language is used. But a misrepresentation that is not fraudulent has no consequences ... unless it is material.

The definition of "misrepresentation" maintained by the Office is found in the most recent addition of Black's Law Dictionary (9th ed. 2009). The definition of "misrepresentation" cited by the ALJ in Conclusion of Law #87 is found in an older version of Black's Law Dictionary. It seems logical that the most recent definition of "misrepresentation" should be used in the assessment of the issue at hand. Accordingly, this exception is accepted and the third sentence of Conclusion of Law #87 is amended to read as cited above in Paragraph 35.

29. The Office excepts to the three cases cited in Conclusion of Law #87 which lend support to the conclusion that no misrepresentation occurred in the present case. The first, Butler v. Yusem, 44 So. 3d 102 (Fla. 2010), deals with "fraudulent misrepresentation." "Fraudulent misrepresentation" is defined independently of "misrepresentation" in Black's Law Dictionary. Similarly, Jallali v. Nova Southeastern Univ., Inc., 55 Do. 3d 665 (Fla. 4th DCA 2011) deals with "negligent misrepresentation", which is also a separate term independently defined in Black's Law Dictionary. The Office also maintains that the ALJ incorrectly asserts that Collignon v. Larson, 145 So. 2d 246 (Fla. 1st DCA 1962), holds that a statement by an insurance agent must be false to be a misrepresentation. "Negligent misrepresentation" and "fraudulent misrepresentation" are independently defined in Black's Law Dictionary. However, while the cases cited by the ALJ in Conclusion of Law #87 do not specifically address "misrepresentation" and may address "misrepresentation" as it is being assessed in this case, it is not within the Office's jurisdiction to strike the ALJ's assessment of these three cases. Accordingly, the exception is rejected.

30. The Office excepts to Conclusion of Law #88. The Office maintains its exception to the factual conclusion that there was no clear and convincing evidence of a false statement by GTL in the Termination Letter. However, as articulated above in Paragraph 14, given the

discretion vested in the ALJ with respect to making factual findings and drawing reasonable inferences that flow therefrom, there is competent substantial evidence in the record to support this finding of factual conclusion. Accordingly, this exception is rejected.

EXCEPTION TO THE RECOMMENDATION

31. Section 120.57(1), Florida Statutes, allows the Office to increase a recommended penalty upon review of the entire record so long as reasons are stated with particularity and there are citations to the record in support of the increase. The Office excepts to the Recommendation based upon paragraphs 99-111 of the Recommended Order. The Recommended Order recommends that the Office find 216 knowing and willful violations of the insurance code and fine GTL one thousand U.S. Dollars ($1,000) per violation not to exceed an aggregate of two hundred thousand U.S. Dollars ($200,000). In light of the severity of the 216 knowing and willful violations of the Florida Insurance Code, and the potential financial benefit realized by GTL as a result of these violations, a two hundred thousand U.S. Dollar ($200,000) fine is insufficient. As noted in Paragraph 110 of the Recommended Order, the financial benefit realized by GTL as a result of these 216 violations is difficult to estimate. However, it is clear that GTL would have had to pay at least a one hundred thousand U.S. Dollars ($100,000) down payment to Celtic if it had chosen to have a conversion program in place to offer. (Joint Exhibit 8, p.4) Therefore, GTL's financial benefit was at least one hundred thousand U.S. Dollars ($100,000). Moreover, as noted in Paragraph 110 of the Recommended Order, GTL would have also been required to pay thirty thousand U.S. Dollars ($30,000) per conversion policy written by Celtic. (Joint Exhibit 8, p.4) Thus GTL's financial benefit, as a result of its violations of the Florida Insurance Code, may have been as great as six million five hundred eighty thousand U.S. Dollars ($6,580,000) [(216 x $30,000) + $100,000]. A two hundred thousand U.S. Dollars

($200,000) fine under such circumstances would not only be inconsistent with the severity of the 216 offenses, but would also impose a cost that is potentially far less than that which could have been incurred had the company not committed the offenses. Section 624.4211, Florida Statutes, allows for an administrative fine in lieu of suspension or revocation of a certificate of authority. However, there is nothing in the statute that requires a fine in lieu of such other penalty. Furthermore, pursuant to Section 624.418(2)(a), Florida Statutes, it is within the Office's discretion to suspend or revoke an insurer's certificate of authority. Based on the insufficiency of the recommended fine as discussed above, the Recommendation is rejected and the Office's exception to suspend GTL's certificate of authority, pursuant to Section 624.418(2), Florida Statutes, for a period of (2) years, is accepted.

IT IS THEREFORE ORDERED:

1. The Findings of Fact of the ALJ, except as modified herein, are adopted in full as the Office's Findings of Fact.

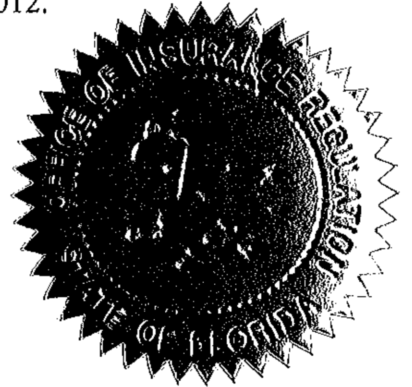
2. The Conclusions of Law of the ALJ, except as modified herein, are adopted in full as the Office's Conclusions of Law.

3. The Recommendation of the ALJ is accepted as modified in accord with this Order.

ACCORDINGLY, the Office finds two hundred sixteen (216) violations of Section 626.9541(1)(b), Florida Statutes, and that the certificate of authority of Guarantee Trust Life Insurance Company is suspended, pursuant to Section 624.418(2), Florida Statutes, for a period of two (2) years.

DONE and ORDERED this 25th day of June, 2012.

KEVIN M. MCCARTY, Commissioner
Office of Insurance Regulation



NOTICE OF RIGHTS

Any party to these proceedings adversely affected by this Order is entitled to seek review of this Order pursuant to Section 120.68, Florida Statutes, and Rule 9.110, Florida Rules of Appellate Procedure. Review proceedings must be instituted by filing a Notice of Appeal with the General Counsel, acting as Agency Clerk, 200 East Gaines Street, 612 Larson Building, Tallahassee, FL 32399-0333 and a copy of the same and filing fee, with the appropriate District Court of Appeal within thirty (30) days of rendition of this Order.

Copies furnished to:

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STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

OFFICE OF INSURANCE REGULATION, Petitioner, vs. GUARANTEE TRUST LIFE INSURANCE COMPANY, Respondent.	)	Case No. 11-1150

RECOMMENDED ORDER

On December 12, 2011, a duly-noticed hearing was held in Tallahassee, Florida, before F. Scott Boyd, an Administrative Law Judge assigned by the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Stephen H. Thomas, Jr., Esquire
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STATEMENT OF THE ISSUE

Whether Respondent has violated sections 627.6675, 626.9541(1)(a)1., 626.9541(1)(a)6., or 626.9541(1)(b), Florida

Statutes, as pled in the Amended Notice and Order to Show Cause, and if so, what is the appropriate penalty.

PRELIMINARY STATEMENT

On January 12, 2011, the Office of Insurance Regulation (Office) filed an Administrative Complaint against Guarantee Trust Life Insurance Company (GTL), alleging violations of various provisions of the Florida Insurance Code, directing GTL to cease and desist, and ordering GTL to show cause as to why its certificate of authority should not be suspended or revoked and why penalties should not be imposed. GTL requested an administrative hearing and the matter was referred to the Division of Administrative Hearings on March 3, 2011. The case was assigned Case Number 11-1150 and assigned to Administrative Law Judge Lawrence P. Stevenson. On August 30, 2011, the case was transferred to the undersigned.

The Office filed a Motion for Protective Order on August 30, 2011, seeking to have any discovery as to the penalties being sought by the Office barred because discussions as to the penalties to be sought were conducted between representatives of the Office and its legal counsel. The Motion for Protective Order was denied, on the ground that it was overly broad, as only communications from counsel to client or client to counsel are privileged, and upon representations from GTL that the privilege would be respected in further discovery.

The Office filed an Unopposed Motion to Amend Notice and Order to Show Cause on September 1, 2011, which was granted. Earlier counts alleging failure of GTL to offer converted policies were amended to allege that GTL issued the termination letter without offering conversion policies, as discussed further below, and new counts were added alleging that the termination letter sent out to covered persons was misrepresentative, deceptive, or misleading.

On November 2, 2011, the Office filed a Motion to Compel Discovery seeking the names and contact information for all persons covered under the group policy that had been issued by GTL to Consumer Benefits Association of America. The Motion to Compel was denied as not being reasonably calculated to lead to the discovery of evidence relevant to the amended charges of issuing the termination letter without offering conversion policies or issuing a termination letter that was misrepresentative, deceptive or misleading.

On November 15, 2011, GTL filed a Petition to Challenge Unadopted Rule against the Financial Services Commission and the Office of Insurance Regulation alleging that the Amended Notice and Order to Show Cause contained a policy statement of general applicability, which was assigned Case Number 11-5827RU. GTL's Motion to Consolidate was granted on December 7, 2011.

At hearing, Joint Exhibits J-1 through J-5 and J-7, J-8, and J-10 were admitted. Two pages of Exhibit J-9 were excluded as being beyond the scope of the agreement between the parties to admit communications regarding the market investigation, and on grounds of relevancy, but the remainder of Exhibit J-9 was admitted. The Office presented the testimony of Mr. Gary Edenfield for the Office and Mr. Allan Heindl of GTL, and offered Office Exhibit O-1, which was admitted over objection that it was unduly repetitious, and O-2, which was admitted without objection. Exhibit O-3 was late-filed by agreement, and was admitted without objection. GTL presented testimony from Mr. Heindl and offered two exhibits, G-2 and G-3, which were admitted without objection.

The Transcript was filed on January 12, 2012. After GTL's Unopposed Motion to Extend the Deadline to Submit Proposed Recommended and Final Orders was granted, proposed orders were timely submitted by both parties on February 17, 2012, and were considered. The Final Order for the unadopted rule challenge and this Recommended Order were issued concurrently.

FINDINGS OF FACT

1. The Office of Insurance Regulation of the Financial Services Commission (the Office) is responsible for enforcing the provisions of the Florida Insurance Code with respect to licensees of the Office.

2. Guarantee Trust Life Insurance Company (GTL) is a foreign insurer, domiciled in Illinois, which holds a certificate of authority to transact business as a life and health insurer in Florida. GTL offers insurance products nationwide, except for New York, including Medicare long-term care, supplemental, cancer, college student, accident, and sickness policies.

3. GTL is subject to the jurisdiction of the Office under the Florida Insurance Code, is subject to fines and disciplinary actions, and is substantially affected by the administrative complaint filed against it.

4. On or about April 3, 2000, GTL entered into an agreement with Celtic Life Insurance Company. Celtic agreed to make medical expense conversion insurance available to eligible participants whose coverage under GTL group medical expense insurance was terminated. However, the agreement with Celtic specifically excluded coverage if GTL discontinued the group medical expense insurance plan in its entirety, or in a particular state. This exclusion was consistent with Celtic's normal rules and both parties to the agreement knew of the exclusion. Any suggestion on the part of GTL that it was confused about Celtic's obligations under this provision of the contract is not credible.

5. A conversion policy is a form of replacement insurance coverage for which certificate holders in a group policy may be eligible when their coverage under a group policy is terminated.

6. On or about June 21, 2006, GTL submitted filing number 06-08141, an out-of-state group major medical policy (Policy), to the Office. The letter transmitting the Policy to the Office noted that the Policy included a conversion provision and stated that GTL had a conversion policy available through Celtic Insurance Company. The letter did not state that the conversion policies to be provided by Celtic would not be available if coverage by GTL was terminated as part of its withdrawal from an individual market or state.

7. The Policy provisions regarding conversion provided in relevant part:

> Health Insurance Conversion. A covered person may convert his or her health insurance coverage under the policy to another form of insurance issued by us if such insurance or any portion of it ends, provided the covered person is entitled to convert and within 63 days after such coverage ends the covered person:
>
> 1. applies in writing to us at our home office; and,
>
> 2. pays the first premium.
>
> We will provide the covered person the required notice within 14 days of the person informing us of their interest in making application for a conversion policy. No evidence of insurability will be required if the covered person converts under this provision. The effective date of the converted policy shall be the day following the termination of insurance under the policy.

The Policy went on to define covered persons entitled to convert as those who had been covered continuously for at least 3 months prior to termination of the policy. The Policy set forth some exceptions. The Policy made no mention that GTL could contract with another insurer to issue the individual converted policy.

8. A group health insurance product is issued to an association or employer. Individual certificates of health insurance are then issued to the members of the group. Under the Policy, forms were issued to Consumer Benefits Association of America. Certificates of health insurance coverage were then issued to at least 216 Florida residents who were members of the Consumer Benefits Association of America (Members) as evidence of their insurance under the Policy. These certificates advised Members of their conversion privilege in the event that coverage shown by the certificate was terminated, in language substantially identical to that in the Policy. The certificates met the statutory requirement for notification of the conversion privilege. The certificates of health insurance coverage made no mention that GTL could contract with another insurer to issue the individual converted policy.

9. The Policy was never profitable for GTL. GTL instituted significant increases in the premium, but losses were still too high, and GTL made decisions to terminate the Group Plan and exit the Florida market entirely.

10. On April 26, 2010, GTL notified the Office that it would be terminating all medical expense health insurance coverage in the individual market in Florida. The notice stated that the Uniform Termination of Coverage would affect 286 insureds in Florida. GTL was not required to file a copy of the letter (Termination Letter) that it planned to mail to Florida residents whose coverage would be terminated, but it did submit a copy to the Office.

11. The Termination Letter was reviewed by Mr. Gary Edenfield, who at the time was a Senior Management Analyst Supervisor in the Division of Life and Health, Office of Forms and Rates. Mr. Edenfield requested that GTL make two changes to the Termination Letter: first, he asked that the reference to a 90-day notice be changed to say 180-day notice; and second, he asked GTL to include a reference to a website listing companies that could be contacted to provide individual replacement coverage on a guaranteed-issue basis.

12. GTL made the requested changes to the Termination Letter and provided a revised copy to Mr. Edenfield, who then advised GTL that it had listed an incorrect website.

13. Mr. Edenfield's advice on each occasion was based upon his understanding that the policies involved were all individual major medical policies, because that was the way GTL had entered the filing in "I-File," the Office's electronic filing system.

He was unaware at this time that the Termination Letter would be going to Members under the group Policy as well.

14. On or about May 5, 2010, GTL sent the Termination Letter[1/] to at least 216 Florida residents covered under the out-of-state group major medical Policy, as well as to about 70 Florida residents who held individual policies offered by GTL.

15. The Termination Letter stated, in relevant part:

> 2. WILL GTL BE OFFERING A REPLACEMENT PLAN? At this time GTL will no longer be offering major medical type coverage. However, if you have 18 months of creditable coverage, you may be eligible for an individual major medical plan on a guaranteed issue basis. The Florida Department of Financial Website http://www.floir.com/CompanySearch/ provides a listing of companies that you may wish to contact to obtain replacement coverage.
>
> If you have any questions about the termination, you may contact Policy Owner Service at 1-800-338-7452. You may also contact the Florida Department of Financial Services, Division of Consumer Services at 1-877-693-5236.

16. A guaranteed-issue policy is a replacement insurance policy that insurers who are authorized to write individual medical coverage in Florida are required by statute to write for an individual whose group coverage has been terminated. A person who is entitled to a conversion policy is not eligible for a guaranteed-issue policy.

17. There was no mention in the Termination Letter of any right to a conversion policy as a form of replacement coverage for the Policy being terminated.

18. At the time it sent the Termination Letter, GTL knew that three-fourths of the recipients of the Termination Letter were holders of certificates of insurance coverage under the Policy. GTL knew that the Policy and these certificates granted a conversion privilege. GTL did not intend to offer a conversion policy to Members whose coverage under the Policy was being terminated. GTL knew it did not have coverage with Celtic to provide converted policies and could not offer the coverage itself. GTL knew the Termination Letter was misleading.

19. On May 11, 2010, the Division of Consumer Services of the Department of Financial Services began receiving consumer complaints related to GTL's non-renewal of health insurance and the Termination Letter. Mr. Edenfield received a call from the Division of Consumer Services stating that they did not believe GTL's action was a termination of individual major medical policies.

20. Mr. Edenfield called Mr. Allan Heindl, Vice President of Product Approval and Compliance at GTL. Mr. Heindl told him that the filing involved an out-of-state group major medical policy. Mr. Edenfield then advised Mr. Heindl that GTL was required to provide a conversion policy, and that GTL would need to send a new

notice out informing Members that they were not entitled to a guaranteed-issue individual policy, but were entitled to a conversion policy. Mr. Heindl stated that he would have to "talk to his people" about that.

21. In a follow-up letter sent by e-mail from the Office and received by GTL on May 20, 2010, the Office again advised GTL that it was required to provide conversion policies. The Office again advised GTL that it would be necessary for GTL to send the Members receiving the first letter a second one that explained that they were entitled to a conversion policy and not a guaranteed-issue policy from another company that issues individual policies. The Office did not set forth any period of time within which GTL needed to send the second letter.

22. Mr. Heindl testified that at the time he received the May 20, 2010 letter, GTL disagreed with the Office about whether GTL was required to provide a conversion benefit.

23. GTL and the Office sent a few e-mails back and forth in early June 2010, discussing whether GTL was required to offer conversion policies under Florida law. GTL continued to say it saw no such requirement in Florida Statutes; the Office continued to maintain that the statutes required it. Mr. Heindl noted that there would not be any conversion plan to offer because the statute required GTL to terminate and non-renew all individual health plans, since they were exiting the market.

24. On or about September 21, 2010, Capital City Consulting, L.L.C., sent a letter to the Office indicating that GTL had reviewed the statutes cited by the Office and had concluded that GTL was not required to offer conversion policies.

25. On September 22, 2010, the Office sent another e-mail advising GTL that it must comply with the conversion statute.

26. On or about September 29, 2010, GTL sent a letter to the Office stating that after reviewing the September 22, 2010, e-mail from the Office and after their telephone call with Deputy Commissioner Mary Beth Senkewicz, they were unable to agree with the Office's interpretation of the statutes and still believed their actions did not violate the Florida Insurance Code.

27. GTL never sent a follow-up letter to Members as requested by the Office.

28. GTL began terminating coverage under the Policy and certificates in November 2010, as renewal dates occurred after the 180-day notice provided in the Termination Letter sent in May.

29. On January 12, 2011, the Office served GTL with a Notice and Order to Show Cause alleging that GTL had violated the Florida Insurance Code by continuing to non-renew policies and failing to offer converted policies.

30. On January 28, 2011, GTL filed a Petition for Administrative Hearing with the Office. It amended that Petition

on February 1, 2011, still maintaining that it was not required to offer conversion policies.

31. In February or March, 2011, GTL began negotiations for an agreement with Celtic to provide the conversion benefit described in the Policy and certificates arising from GTL's exit from the Florida market.

32. On April 5, 2011, in response to a March 17, 2011, inquiry from Celtic as to the number of covered lives remaining, Mr. Heindl advised in part, "The size of the group in FL at the time of termination was 286 and today we have 28 left. I'm not sure if FL would make us go back and offer coverage to all previously insured insured's. If FL does, I can't imagine many would come back to GTL."

33. Discussions between GTL and Celtic continued in April and May. GTL reached an "understanding" with Celtic in May that Celtic would provide conversion coverage. The understanding was that if GTL sent notification to all terminated insureds informing them of the conversion available from Celtic, then GTL would pay an initial transaction fee of $125,000 to Celtic, due when the agreement was entered into, along with the sum of $30,000 per policy for each conversion policy subsequently issued by Celtic. If Celtic did not send out a notice to the terminated insureds, then the initial transaction fee would be reduced to $100,000.

At the time the understanding was reached, only 28 or fewer Members were left; there was no understanding in place when the coverage of at least 188 Members was terminated.

34. No written contract incorporating this understanding was ever entered into with Celtic. GTL did not send out a notice to the terminated Members. The initial transaction fee was never paid. Mr. Heindl testified at hearing that if a Member had come forward and actually applied for conversion, GTL would then have moved forward and paid the agreed-upon fees. No Member requested information about a conversion policy.

35. GTL chose not to send any notice to terminated Members in an effort to eliminate or minimize the possibility that Members might request conversion policies, and so avoid the costs of contracting with Celtic to provide the conversion coverage. GTL was hoping that the Members were unaware of their conversion rights, and would not become aware of them.

36. At no time from the inception of the Policy and the certificates based thereon, through the time the Termination Letters were sent, until the time of the Final Hearing in this case, did GTL have in effect any written contract with Celtic or any other insurer to issue converted policies to Members upon GTL's termination of the Policy group coverage in its entirety, or in the State of Florida.

37. On August 26, 2011, Mr. Heindl, party representative for GTL, conceded under oath in deposition that the Policy was an out-of-state group policy and that sections 627.6515 and 627.6675, Florida Statutes (2010),[2/] did apply to the Policy.

38. On September 2, 2011, an Order was issued granting the Office's Unopposed Motion to Amend Notice and Order to Show Cause. Counts I and II of the earlier complaint were amended. The earlier complaint had charged in these counts that "Guarantee Trust violated the Florida Insurance Code by failing to offer converted policies as required by Section 627.6675, Florida Statutes." As amended, Counts I and II alleged that "Guarantee Trust violated the Florida Insurance Code by issuing the Termination Letter without offering converted policies required by the Florida Insurance Code and Section 627.6675, Florida Statutes."

39. The word "offer" or "offering" is not defined in the Florida Insurance Code. These terms are used in dozens of places throughout the Code, however, in phrases such as "insurers to offer coverage," "offers policies or certificates," "licensees offering policies," and "offering insurance," all in the context of describing insurance lines and products being made available in the market by an insurer. GTL itself used these words in similar contexts. In its September 21, 2010, letter to the Office, GTL stated "GTL is not required to offer conversion policies."

In later e-mails to Celtic, GTL referred to "offering a conversion option" and "make us go back and offer coverage." In the Termination Letter itself, GTL wrote, "GTL will no longer be offering major medical type coverage." GTL could not reasonably have interpreted the phrase "without offering converted policies" in Counts I and II as referring only to notification to Members. GTL was well aware that Counts I and II were alleging that GTL's issuance of the Termination Letter constituted a revocation of GTL's contractual and statutory responsibility to make conversion insurance available to Members at a point in time at which GTL did not have a written contract in place with any carrier to provide such conversion policies. GTL was not hindered in its ability to prepare a defense to Counts I and II.

40. The Office showed by clear and convincing evidence that at the time GTL issued the Termination Letter, GTL did not have a contract with another insurer to provide conversion policies upon GTL's exit from the Florida market, and would be unable to do so itself.

41. The Amended Notice and Order to Show Cause of September 2, 2011, also added three new counts, alleging that the Termination Letter sent out to covered persons constituted an unfair insurance trade practice under the Florida Insurance Code because it was misrepresentative, deceptive, and misleading.

42. The statement in the Termination Letter that GTL would no longer be offering major medical coverage was not a false statement. GTL was withdrawing entirely from the Florida market and would not itself be offering any coverage, including individual conversion policies. Although technically true, the statement was nevertheless likely to mislead a reasonable Member, because it made no mention that GTL was legally required to arrange for another provider to offer the conversion policy on GTL's behalf. The statement that GTL would no longer be offering major medical type coverage, omitting any further information, would leave the incorrect impression with a reasonable Member that the right to a conversion policy upon termination, as set forth in the certificate of health insurance, no longer existed. GTL knew that this statement was misleading as to a reasonable Member.

43. Similarly, the statement in the Termination Letter that "you may be eligible" for an individual major medical plan on a guaranteed issue basis was not a false statement. The statement did not say that any reader "was" entitled to such a policy, only that they "may" be. Again, while not technically false, this statement was likely to mislead a reasonable Member, for none of these individuals was in fact eligible for a guaranteed-issue policy. GTL could easily have distinguished between Members and its individual policy holders in the letter, or better yet, sent two different letters, but it failed to do so. GTL instead chose

to say only that readers "may be eligible" for a guaranteed issue policy and to include the reference to the Department's website list of other companies, without any mention of the converted policy available to a majority of recipients of the letter. This omission was likely to leave a reasonable Member eligible for a conversion policy with the incorrect impression that this right no longer existed. GTL knew that this statement was misleading.

44. Even the second question asked in the Termination Letter was misleading. The question posed by GTL, "WILL GTL BE OFFERING A REPLACEMENT PLAN?" was followed by true statements, but it was not the right question. Certificate holders would be interested in knowing what coverage might be available to them from any source to replace the terminated coverage, not simply coverage from GTL itself. Again, reasonable Members would likely be left with the impression that a conversion policy was no longer available to them because GTL was exiting the Florida market. GTL knew that posing the question in this fashion was misleading.

45. On November 15, 2011, GTL filed a Petition to Challenge Unadopted Rule. The Petition was served on the Office more than 30 days before it was filed with the Division of Administrative Hearings, as stipulated at hearing.

46. The Financial Services Commission has not adopted the statement that it is a violation of provisions of the Florida Insurance Code to "issue a termination letter without offering

converted policies as required by Section 627.6675," or any similar statement, by rulemaking procedures.

47. The Office proved by clear and convincing evidence that Celtic was never required to provide conversion policies if the termination of the Policy was a result of a decision to discontinue major medical coverage in Florida. It similarly proved that no other contract providing conversion policies under these circumstances was ever entered into with Celtic or any other insurer, and that GTL could not itself provide conversion coverage.

48. The Office proved by clear and convincing evidence that GTL knowingly made, issued, published, disseminated, circulated, and placed before the public the Termination Letter.

49. The Office failed to prove by clear and convincing evidence that any statement in the Termination Letter was false.

50. The Office proved by clear and convincing evidence that statements in the Termination Letter were made for the purpose of inducing, and tended to induce, the forfeiture of the conversion policy to which the Members were entitled under the Policy.

51. The Office proved by clear and convincing evidence that the Termination Letter contained an assertion, representation and statement with respect to the business of insurance that was willfully deceptive and misleading. GTL knew, or should have

known, that this was an unfair or deceptive act or practice under the Florida Insurance Code.

CONCLUSIONS OF LAW

52. The Division of Administrative Hearings has jurisdiction over the parties and subject matter in this proceeding pursuant to sections 120.569 and 120.57(1), Florida Statutes (2011).

53. GTL is a "person" within the meaning of section 626.9511 and is subject to the jurisdiction and regulation of the Office pursuant to the Florida Insurance Code. GTL has standing to contest the intended action of the Office set forth in the complaint against it.

54. The Office has the burden of proof to show, by clear and convincing evidence, that GTL committed the acts alleged in the Amended Notice and Order to Show Cause. Dep't of Banking and Fin. v. Osborne Stern and Co., 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

55. Clear and convincing evidence has been defined as requiring:

> [T]hat the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

In re Davey, 645 So. 2d 398, 404 (Fla. 1994)(quoting Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)).

56. The applicable statutes "must be construed strictly, in favor of the one against whom the penalty would be imposed." Munch v. Dep't of Prof'l Reg., 592 So. 2d 1136, 1143 (Fla. 1st DCA 1992); Dyer v. Dep't of Ins., 585 So. 2d 1009 (Fla. 1st DCA 1991).

Counts I and II

57. Count I alleges that "Guarantee Trust violated the Florida Insurance Code by issuing the Termination Letter without offering converted policies required by the Florida Insurance Code and Section 627.6675, Florida Statutes." Count II alleges violation of the same statute, and further alleges that this failure is a "hazardous and injurious business practice" to its policyholders. This further factual allegation in Count II is an element of section 624.418(1)(b). However, GTL was not charged with violating section 624.418(1)(b).

58. Disciplinary actions may be based only upon those offenses specifically alleged in the Administrative Complaint. See Cottrill v. Dep't of Ins., 685 So. 2d 1371 (Fla. 1st DCA 1996).

59. Section 627.6425 provides that if an insurer discontinues health insurance coverage in the individual market in Florida, the insurer must provide notice 180 days prior to the date of the first nonrenewal and may not provide such coverage in

Florida for a period of 5 years after the date of the last nonrenewal. This section provides that the term "individual health insurance" also includes out-of-state group insurance for the purpose of these requirements.

60. Section 627.6515(2) governs the regulation of out-of-state group health insurance policies such as the Policy at issue here, and requires such policies to provide conversion policies pursuant to section 627.6675.

61. Section 627.6675 provides in relevant part:

> 627.6675 Conversion on termination of eligibility.— Subject to all of the provisions of this section, a group policy delivered or issued for delivery in this state by an insurer . . . that provides . . . major medical expense insurance . . . shall provide that an employee or member whose insurance under the group policy has been terminated for any reason, including discontinuance of the group policy in its entirety . . . shall be entitled to have issued to him or her by the insurer a policy or certificate of health insurance, referred to in this section as a "converted policy." A group insurer may meet the requirements of this section by contracting with another insurer, authorized in this state, to issue an individual converted policy, which policy has been approved by the office under s. 627.410.

62. A detailed analysis of the statute is necessary. The first sentence of section 627.6675 provides that a major medical expense group policy must contain a provision stating that a member whose insurance has been terminated is entitled to a conversion policy.

63. It is clear that the statute is not only requiring a group policy to contain a conversion right, but is requiring, albeit indirectly, an insurer to actually have the ability to provide the conversion policy. This interpretation is confirmed by the next sentence, which states that a group insurer may "meet the requirements of this section" by contracting with another insurer. A contract with another insurer would not in any way meet the requirement for the policy to contain a provision regarding the right to conversion. Rather, it is the actual ability to provide conversion coverage that can be met through a contract with another insurer. In fact, in a situation in which a group insurer is withdrawing from the Florida market, the only way a conversion policy could be provided is through a contract with another insurer.

64. What is not clear from the language of section 627.6675, however, is the point in time at which the duty arises to contract with another insurer to provide the conversion benefit in the case of withdrawal from the Florida market.

65. There are at least three possible interpretations. First, because no insurer can ever know with certainty that it will not later be withdrawing from the State entirely, one might conclude that every group insurer must enter into such a contract not later than the time it issues the original group policy.

Second, one might conclude that it is sufficient to have a contract at the time a group insurer decides to exit the Florida market entirely, at or before the time it actually gives notice of that decision. Third, one might conclude that the requirement of the statute is met if the contract has been entered in time for it to be in force at the time the conversion policy actually needs to be issued.

66. Various policy reasons might be cited in favor of one interpretation or another, but the statute itself says nothing about the time when the contract must be in place.

67. Any ambiguity in penal statutes must be interpreted in favor of the licensee. Beckett v. Dep't of Fin. Servs., 982 So. 2d 94 (Fla. 1st DCA 2008). When a penalty is imposed for violation of a statute, any doubt as to its meaning must be resolved in favor of a strict construction, so that those covered by the statute have clear notice of what conduct the statute proscribes. Capital Nat'l Fin. Corp. v. Dep't of Ins., 690 So. 2d 1335, 1337 (Fla. 3rd DCA 1997)(citing City of Miami Bch v. Galbut, 626 So. 2d 192 (Fla. 1993)).

68. The ambiguity in section 627.6675 as to the time at which a contract with another insurer to provide conversion policies must be entered into must be resolved in favor of GTL. An insurer exiting the market must therefore enter into a contract with another insurer to provide conversion coverage in time for

that contract to be in force when the conversion policies actually need to be issued.

69. Subsection 627.6675(17) contains a notice provision applicable to the conversion privilege. It states:

> (17) NOTIFICATION.--A notification of the conversion privilege shall be included in each certificate of coverage. The insurer shall mail an election and premium notice form, including an outline of coverage, on a form approved by the office, within 14 days after an individual who is eligible for a converted policy gives notice to the insurer that the individual is considering applying for the converted policy or otherwise requests such information. The outline of coverage must contain a description of the principal benefits and coverage provided by the policy and its principal exclusions and limitations, including, but not limited to, deductibles and coinsurance.

70. Under its agreement with GTL, Celtic Life Insurance Company was not obligated to provide conversion coverage to Members if the termination of their coverage under the Policy was caused by GTL's withdrawal from the Florida market. The agreement with Celtic provided in relevant part:

> An eligible Participant may apply for Conversion Insurance if his or her Plan coverage terminates for any reason other than the following:
>
> Discontinuance of the Plan, either in its entirety or in a particular state or states; or, except where Conversion is otherwise required by state law, discontinuance of the employer's participation in the Plan.

In the quoted sentence, it is clear that the phrase "except where Conversion is otherwise required by state law" does not modify the part of the sentence that comes just before the semicolon, but rather applies only to discontinuation of an employer's participation in the plan.

71. GTL never entered into a binding contract with Celtic or with any other insurer to provide conversion coverage in the event it exited from the Florida market.

72. Counts I and II state that GTL violated the Florida Insurance Code by "issuing the Termination Letter without offering converted policies" required by section 627.6675. GTL argues that this can only mean that GTL failed to affirmatively offer Members the statutorily mandated right of conversion as a part of the Termination Letter that was sent to Members on or about May 5, 2010. GTL contends that the word "offering" in the charge equates to "notifying" Members of the right to converted policies. It maintains that the statute only requires that Members be notified of their right to conversion in the certificate of coverage, not in the Termination Letter.

73. GTL is correct that under the statute, notification to a Member of the conversion privilege is required only in the certificate of coverage. This notification was provided in the certificates, and section 627.6675 did not require GTL

to give notice of the conversion privilege at the time it notified Members that their coverage was being terminated.

74. The Office, however, argues that the Termination Letter incorrectly told Members that it would not be offering a conversion policy. The Office argues that the violation of section 627.6675 occurred because the letter "revoked" the offer to provide conversion coverage that was already contained in the Policy.

75. In disputing the Office's interpretation, GTL asserts that an unadopted rule is being applied. However, subparagraph 120.57(1)(e)1., which provides that an agency or administrative law judge may not base agency action that determines the substantial interests of a party on an unadopted rule, has no application in this case. There was no evidence at hearing of the existence of any unadopted rule or generally applicable agency policy statement. The statement of the charges itself contains nothing beyond the allegation that certain facts constitute a facial violation of section 627.6675. As the final sentence of subparagraph 120.57(1)(e)1. specifically notes, an agency is free to simply apply a statute to facts at hearing, without engaging in rulemaking.

76. GTL next suggests that the facts alleged to be a violation are ambiguous, since the phrase "issuing the Termination Letter without offering converted policies" might be interpreted

to refer to providing affirmative notice to Members of their conversion rights within the Termination Letter. If ambiguous charges did hinder GTL in preparing its defense, again GTL's interpretation must prevail. Ghani v. Dep't of Health, 714 So. 2d 1113 (Fla. 1st DCA 1998).

77. However, there is ample evidence that GTL was aware that in using the term "offering," the Office was referring to the contractual and statutory responsibility of GTL to make conversion policies available to Members, as discussed earlier. In essence, Counts I and II alleged that GTL's issuance of the Termination Letter constituted a revocation of GTL's earlier "offer" embodied within the text of the certificates. GTL was familiar with use of the phrase "offering insurance" from the Florida Insurance Code and used similar phrases in its own correspondence. GTL had argued for months, before charges were filed or amended, that GTL was not required to make conversion policies available to Members.

78. While the phrase "issuing the Termination Letter without offering converted policies" semantically might also refer to failure to affirmatively notify Members about their right to a converted policy in the Termination Letter, this ambiguity in the language used in drafting the charges was purely technical in nature. It is well settled that an administrative complaint need not be cast with that degree of technical nicety required in a criminal prosecution. Libby Investigations v. Dep't of State,

685 So. 2d 69 (Fla. 1st DCA 1996). An administrative complaint must state the acts complained of with sufficient specificity to allow a licensee a fair chance to prepare a defense. Davis v. Dep't of Prof'l Reg., 457 So. 2d 1074 (Fla. 1st DCA 1984). Counts I and II certainly might have been drafted more clearly, but GTL was not prejudiced in preparing its defense. GTL was aware that the Office was charging that GTL's Termination Letter revoked its "offering" of conversion coverage in violation of statute.

79. However, the Office did not show by clear and convincing evidence that the Termination Letter of GTL could or did "revoke" the offer to provide conversion coverage contained in the certificates.

80. First, the language of the Termination Letter never stated that no conversion policy was available, although it left that misleading impression. Without a clear statement in contravention of the terms of the certificate, it cannot be said that the letter somehow "revoked" the offer contained there.

81. Second, and more importantly, the contractual and statutory obligation to offer conversion coverage could not be erased or revoked even by an unambiguous unilateral communication from GTL advising that the conversion coverage was no longer being offered. Section 627.6675 requires that certain language providing conversion coverage must be a part of a policy, and that requirement was met when the certificates were issued. Although a

subsequent letter could not retroactively create a violation of section 627.6675, it could be a violation of other provisions of the Florida Insurance Code, such as alleged in other counts discussed below.

82. In summary, the Termination Letter issued by GTL had no effect on either: 1) the requirement that the Policy and certificates contain a provision on conversion; or 2) the requirement that GTL contract with another insurer to provide such coverage, because -- under the interpretation of section 627.6675 most favorable to GTL -- that requirement had not yet arisen.

83. The Office failed to prove by clear and convincing evidence that GTL violated the Florida Insurance Code by issuing the Termination Letter without offering converted policies in violation of section 627.6675.

84. GTL was not charged with a violation of section 624.418(1)(b), so Count II does not allege any violation distinct from that alleged in Count I.

Counts III and IV

85. Section 626.9521 of the Unfair Insurance Trade Practices Act prohibits any person from engaging in an unfair method of competition or an unfair or deceptive act or practice involving the business of insurance, as defined in section 626.9541.

86. Section 626.9541, Florida Statutes, provides in relevant part:

> (1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS.—The following are defined as unfair methods of competition and unfair or deceptive acts or practices:
>
> (a) Misrepresentations and false advertising of insurance policies.—Knowingly making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, illustration, circular, statement, sales presentation, omission, or comparison which:
>
> 1. Misrepresents the benefits, advantages, conditions, or terms of any insurance policy.
>
> * * *
>
> 6. Is a misrepresentation for the purpose of inducing, or tending to induce, the lapse, forfeiture, exchange, conversion, or surrender of any insurance policy.

87. No cases defining misrepresentation for purposes of paragraph 626.9541(1)(a) were found or cited by the parties. Misrepresentation almost always requires a false statement, however. Black's Law Dictionary (rev. 4th ed.), defines "misrepresentation" as any "manifestation by words or other conduct by one person to another that, under the circumstances, amounts to an assertion not in accordance with the facts." Florida law has similarly defined misrepresentation in most contexts.[3/] See, e.g., Butler v. Yusem, 44 So. 3d 102 (Fla. 2010)(false statement concerning material fact required element of fraudulent misrepresentation); Jallali v. Nova Southeastern Univ., Inc., 55 So. 3d 665 (Fla. 4th DCA 2011)(without false statement, there can be no negligent misrepresentation); Collingnon v.

Larson, 145 So. 2d 246 (Fla. 1st DCA 1962)(for statement by insurance agent to constitute a misrepresentation under statute, it must be found to have been false). In the absence of a statutory definition, the word "misrepresentation" should be given this usual meaning. Nat'l Fed'n of Retired Persons v. Dep't of Ins., 553 So. 2d 1289 (Fla. 1st DCA 1989). Misrepresentation, as defined in paragraph 626.9541(1)(a), requires a false statement.

88. The Office failed to prove by clear and convincing evidence that any statement in the Termination Letter was a false statement. It contained no false statement about the benefits or terms of the Policy. It truthfully stated that GTL would no longer be offering major medical type coverage. It truthfully stated that "you may be eligible" for an individual major medical plan on a guaranteed-issue basis. While it is true that Members were not eligible, others who received the letter were. Since a false statement is a required element of Count III and Count IV, the Office failed to prove either of these counts by clear and convincing evidence.

Count V

89. Section 626.9521 of the Unfair Insurance Trade Practices Act prohibits any person from engaging in an unfair method of competition or an unfair or deceptive act or practice involving the business of insurance, as defined in section 626.9541.

90. Section 626.9541(1)(b) provides in relevant part:

> (1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS.—The following are defined as unfair methods of competition and unfair or deceptive acts or practices:
>
> * * *
>
> (b) False information and advertising generally.—Knowingly making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public:
>
> 1. In a newspaper, magazine, or other publication,
>
> 2. In the form of a notice, circular, pamphlet, letter, or poster,
>
> 3. Over any radio or television station, or
>
> 4. In any other way,
>
> an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of insurance, which is untrue, deceptive, or misleading.

91. As noted earlier, section 627.6675 provides that when a group policy is terminated, an insurer may meet its responsibility to provide an individual converted policy by contracting with another insurer, as GTL knew.

92. Under subparagraph 627.6487(3)(b)2., an individual who is eligible for a conversion policy under section 627.6675 is not

also eligible for an individual major medical plan on a guaranteed issue basis, as GTL knew.

93. Deception under paragraph 626.9541(1)(b) does not require that a false statement be made. It is sufficient if there is a representation, or an omission, with respect to the business of insurance which is misleading. Cf. Millennium Comm. v. Dep't of Legal Aff., 761 So. 2d 1256, 1263 (Fla. 3rd DCA 2000)(under Florida Deceptive and Unfair Trade Practices Act, practice is deceptive if there is a representation or omission likely to mislead a reasonable consumer under the circumstances).

94. The Termination Letter contained assertions, representations, and statements with respect to the business of insurance that were deceptive and misleading because they left the impression that a right to a conversion policy no longer existed, which, for eligible Members, was incorrect. Cf. F.T.C. v. Cyberspace.com, LLC, 453 F.3d 1196, 1200 (9th Cir. 2006) (solicitation may contain truthful disclosures but still be misleading based upon net impression created). GTL knew that the Termination Letter was misleading as to Members eligible for a conversion policy.

95. While section 627.6675 contains no requirement that an insurer affirmatively remind group members of their conversion right upon termination, an insurer does remain

bound by the requirements of paragraph 626.9541(1)(b). Should an insurer provide information, that information cannot be deceptive or misleading. Cf. Vokes v. Arthur Murray, Inc., 212 So. 2d 906, 909 (Fla. 2nd DCA 1968)(in contractual situations where a party owes no duty to disclose facts, if he nevertheless undertakes to do so, he must disclose the whole truth).

96. In proving a violation of paragraph 626.9541(1)(b), it was not necessary for the Office to prove that any particular Member was in fact deceived or misled, but only necessary for it to show that the statement was objectively deceptive or misleading. Cf. Dep't of Legal Affairs v. Commerce Commercial Leasing, LLC, 946 So. 2d 1253 (Fla. 1st DCA 2007)(Florida Deceptive and Unfair Trade Practices Act does not require showing of actual reliance on representation or omission, only whether practice likely to deceive); Davis v. Powertel, Inc. 776 So. 2d 971 (Fla. 1st DCA 2001)(FDUTPA requires proof that practice is objectively "likely to mislead" consumers, not proof that any consumer was subjectively misled).

97. The Office proved by clear and convincing evidence that GTL knowingly made, published, disseminated, and circulated the Termination Letter to 216 Members, which contained an assertion, representation and statement with respect to the business of

insurance that was willfully deceptive and misleading. GTL knew, or should have known, that this was an unfair or deceptive act or practice under the Florida Insurance Code.

98. The Office proved by clear and convincing evidence that GTL committed 216 willful violations of the Florida Insurance Code.

Penalties

99. Section 626.9581 provides that the Office may, in its discretion, suspend or revoke the certificate of authority, or order such other relief as may be provided in the Florida Insurance Code, as to any person who knew, or reasonably should have known, that they committed an unfair or deceptive act or practice. Section 624.01 provides that chapters 624-632, 634, 635, 641, 642, 648, and 651 constitute the Florida Insurance Code. Such other relief therefore includes the provisions of sections 624.310, 624.418, 624.4211, and 626.9521.

100. Subsection 624.310(5) provides that the Office may impose penalties against any person for violation of any provision of the Florida Insurance Code, including the suspension or revocation of the certificate of authority <u>in addition to</u> the imposition of administrative fines. It provides that fines shall not exceed the amounts specified in section 624.4211.

101. Section 624.418(2)(a), Florida Statutes, states that the Office may, in its discretion, suspend or revoke the certificate of authority of an insurer for violations of the Florida Insurance Code.

102. Section 624.4211 grants authority to the Office to impose a fine <u>in lieu of</u> suspension or revocation. It provides in relevant part:

> (1) If the office finds that one or more grounds exist for the discretionary revocation or suspension of a certificate of authority issued under this chapter, the office may, in lieu of such revocation or suspension, impose a fine upon the insurer.
>
> (2) With respect to any nonwillful violation, such fine may not exceed $5,000 per violation. In no event shall such fine exceed an aggregate amount of $20,000 for all nonwillful violations arising out of the same action.
>
> * * *
>
> (3) With respect to any knowing and willful violation of a lawful order or rule of the office or commission or a provision of this code, the office may impose a fine upon the insurer in an amount not to exceed $40,000 for each such violation. In no event shall such fine exceed an aggregate amount of $200,000 for all knowing and willful violations arising out of the same action.

103. Subsection 626.9521(2) provides that any person who engages in a deceptive act or practice shall be subject to: a fine not greater than $5,000 for each nonwillful violation, not to exceed an aggregate amount of $20,000 for all nonwillful

violations arising out of the same action; and a fine not greater than $40,000 for each willful violation, not to exceed an aggregate amount of $200,000 for all willful violations arising out of the same action. It states that these fines may be imposed in addition to other penalties.

104. GTL argues that no administrative fine may be imposed in this case for any unfair method of competition or an unfair or deceptive act or practice because paragraph 624.310(5)(a) requires that GTL be given a written notice that sets forth the nature of the violations and sets a reasonable period of time to correct them before a hearing can be initiated, or a fine accrue.

105. GTL is correct in part, in that no fine pursuant to subsection 624.310(5) may be imposed. While GTL was arguably notified in writing of the nature of the violation, and what action needed to be taken by GTL to correct it, no reasonable period of time within which GTL needed to take the action was set forth in that notice. Although referenced by the Office in several counts, the administrative fine provisions of subsection 624.310(5) are therefore not applicable here.

106. However, subsection 624.310(7) goes on to expressly state that the provisions of section 624.310 are in addition to other provisions of the Florida Insurance Code, and do not curtail or impede similar provisions or the power of the Office. Thus, under the complicated penalty structures of the Florida Insurance

Code, similar penalty provisions found in sections 626.9581, 624.418, and 624.4211 are not implicated by the "advance notice" provisions of subsection 624.310(5).

107. In recommending a penalty, the undersigned has considered that GTL knew that the Policy and the certificates granted Members conversion rights, and knew, or should have known, that Florida law required them to provide conversion coverage or contract with another insurer to provide it. They also knew their contract with Celtic did not provide conversion policies when GTL was withdrawing from the Florida market.

108. GTL knew that the Termination Letter was objectively misleading for a large majority of the people who were to receive it, and knew that sending a misleading letter about the business of insurance was a violation of the Florida Insurance Code.

109. Under subparagraph 627.6425(3)(b)2., because GTL has completely discontinued offering all health insurance in Florida, GTL is prohibited from offering any individual health insurance in Florida for a five-year period beginning on the date of discontinuation of the last policy not renewed.

110. The financial benefit to GTL resulting from its action is difficult to estimate. At a point when only 28 Members remained, in April, 2011, GTL's understanding with Celtic suggests the two insurers believed it would cost Celtic something less than

$100,000, plus $30,000 per Member policy, to assume the risk and responsibility of providing conversion coverage if requested.

111. GTL did not send out a letter to the Members correcting the impression left by the misleading letter of May 5, 2010, or make any other attempt to remedy the violation. GTL was hoping that the Members were unaware of their conversion rights, and would not become aware of them.

RECOMMENDATION

Upon consideration of the above findings of fact and conclusions of law, it is

RECOMMENDED:

That the Office of Insurance Regulation enter a Final Order finding that Guarantee Trust Life Insurance Company committed 216 knowing and willful violations of subsection 626.9521(1), Florida Statutes, for engaging in an unfair method of competition and unfair or deceptive act or practice as defined in subsection 626.9541(1)(b), Florida Statutes, and imposing a fine of $1,000 for each such violation, for a total fine not to exceed an aggregate amount of $200,000.

DONE AND ENTERED this 16th day of March, 2012, in Tallahassee, Leon County, Florida.

F. Scott Boyd

F. SCOTT BOYD
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 16th day of March, 2012.

ENDNOTES

[1/] It is not entirely clear from the evidence whether GTL corrected the reference to the erroneous website prior to sending out the letter or later sent a follow-up letter with the corrected website, but that issue is not material here.

[2/] All references to statutes and rules are to the versions in effect in 2010, which remained unchanged throughout the time of the alleged violations, except as otherwise indicated.

[3/] There is no affirmative duty to disclose involved here, as discussed earlier.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this recommended order. Any exceptions to this recommended order should be filed with the agency that will issue the final order in this case.