



**STATE OF NEW YORK
INSURANCE DEPARTMENT**
25 BEAVER STREET
NEW YORK, NEW YORK 10004

David A. Paterson
Governor

Eric R. Dinallo
Superintendent

The Office of General Counsel issued the following opinion on April 17, 2008, representing the position of the New York State Insurance Department.

Re: Payment by insurance broker of referral fees to non-licensees

Question Presented:

May a licensed insurance broker compensate a non-licensee for referrals made to the insurance broker?

Conclusion:

Yes. Pursuant to N.Y. Ins. Law §§ 2114, 2115 and 2116 (McKinney Supp. 2008), a non-licensee may be compensated for referrals, provided that the non-licensee does not engage in discussions with the potential insureds regarding policy terms and conditions, and the payment of referral fees are not contingent upon the referred person purchasing a policy.

Facts:

The inquirer represents a life insurance broker and asks whether the broker may compensate non-licensees for referring potential insureds to the insurance broker. In an attempt to give the client an answer, the inquirer reviewed Office of General Counsel ("OGC") Opinion No. 06-08-06 (Aug. 3, 2006), as well as Insurance Law § 2116, from which the inquirer concludes that a licensed insurance broker may compensate a non-licensee for referrals as long as "the compensation of such referrals is not based upon the purchase of insurance by such person."

The inquirer states that the broker "obviously" will be unwilling to compensate a non-licensee for any referrals unless they result in the sale of policies. The inquirer seeks clarification about restrictions on the payment of referral fees to non-licensees, and the circumstances under which an insurance broker may pay referral fees to a non-licensee.

Analysis:

Insurance Law §§ 2102 and 2116 are relevant to the inquiry. Insurance Law § 2102(a)(1) prohibits any person or entity from acting as an insurance producer¹ without having the authority to do so. That provision states in pertinent part as follows:

No person, firm, association or corporation shall act as an insurance producer or insurance adjuster in this state without having authority to do so by virtue of a license issued and in force pursuant to the provisions of this chapter.

Insurance Law § 2116, which prohibits the compensation of any person, firm association or corporation for acting as an insurance broker without a license, reads as follows:

No insurer authorized to do business in this state, and no officer, agent or other representative thereof, shall pay any money or give any other thing of value to any person, firm, association or corporation for or because of his or its acting in this state as an insurance broker, unless such person, firm association or corporation is authorized so to act by virtue of a license issued or renewed pursuant to the provisions of section two thousand one hundred four of this article. For purposes of this section, “acting as insurance broker” shall not include the referral of a person to a licensed insurance agent or broker that does not include a discussion of specific insurance policy terms and conditions and where the compensation for referral is not based upon the purchase of insurance by such person. (Emphasis added.)²

The Insurance Law is clear, and the Department has consistently concluded, that a non-licensee may not receive compensation for any referrals that are contingent upon the purchase of policies by the referred persons. See e.g., OGC Opinion No. 07-04-14 (Apr. 27, 2007); OGC Opinion No. 06-11-23 (Nov. 29, 2006); OGC Opinion No. 05-07-27 (July 27, 2005). In such an arrangement, a non-licensee would be acting as an insurance broker or agent without a license, in violation of Insurance Law § 2102. See also Ins. Law §§ 2101(a)(1); 2116. Therefore, the payment of a referral fee to a non-licensee only where the “introductions bear fruit” would run afoul of the Insurance Law.

Further, if the inquirer’s client compensates non-licensees for acting as an insurance broker in violation of Insurance Law § 2116, the Superintendent could determine that the client is acting in an untrustworthy manner by facilitating unlicensed activities. See OGC Opinion No. 07-06-16 (June 18, 2007); OGC Opinion No. 06-09-08 (Sept. 15, 2006). Upon a finding of untrustworthiness, the Superintendent may, pursuant to Insurance Law § 2110, revoke, suspend, or refuse to renew an insurance broker’s license.

For further information, you may contact Senior Attorney Camielle A. Campbell at the New York City office.

¹ “Insurance producer” is defined in Insurance Law § 2101(k) as “any insurance agent, insurance broker, reinsurance intermediary, excess lines broker, or any person required to be licensed under the laws of this state to sell, solicit or negotiate insurance.”

² Insurance Law § 2114, which applies to life, accident and health insurance agents, and Insurance Law § 2115, which applies to property/casualty insurance agents, contain similar provisions.