



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

George E. Pataki  
Governor

Gregory V. Serio  
Superintendent

The Office of General Counsel issued the following opinion on April 2, 2004, representing the position of the New York State Insurance Department.

**RE: Insurance Consultants**

**Questions Presented:**

1. May an individual, who is not licensed as an insurance consultant, agent or broker charge a fee for providing insurance consulting services?
2. May an individual, who is licensed as an insurance consultant, sell insurance, without being separately licensed as an insurance agent or broker?
3. Pursuant to the Insurance Law, are there any penalties for charging fees for consulting services, without being licensed as an insurance consultant, agent or broker?
4. Is a licensed insurance agent required to disclose his or her licensing status to a client?
5. Are ABC Co., Mr. A and Mr. B licensed by the New York State Insurance Department?

**Conclusions:**

1. No. An individual who is not licensed as an insurance consultant, agent or broker may not charge a fee for providing insurance consulting services.
2. No. Such insurance consultant may not sell insurance, without being separately licensed as an insurance agent or broker.
3. N.Y. Ins. Law § 109(a) (McKinney 2000) makes every violation of the Insurance Law a misdemeanor, unless such violation constitutes a felony. Consequently, a person who engages in such activities may be subject to a prison sentence of up to one year in duration. The Superintendent may also seek injunctive relief.
4. N.Y. Comp. Codes R. & Regs. tit. 11, § 34.5 (Regulation 125) requires the establishing agent or broker to display the license of the supervising person or persons responsible for the agent's or broker's place of business. If the agent is acting as the supervising person, then the agent must display its license at its place of business.
5. Mr. A and Mr. B are licensed by the Department as insurance agents to transact life and health insurance and variable annuities business. However, ABC Co. is not licensed by the Department.

**Facts:**

No specific fact pattern was presented.

**Analysis:**

**Question No. 1**

N.Y. Ins. Law § 2102(b)(1) (McKinney 2000) prohibits a person, firm, association or corporation from identifying or holding himself or itself out as an insurance consultant in New York State without a proper license.

N.Y. Ins. Law § 2102(b)(3) (McKinney 2000) prohibits a person or firm from accepting compensation for examining, appraising, reviewing, evaluating, recommending or advising on an insurance policy in New York, unless licensed as an insurance agent, broker or consultant. Specifically, that section provides:

(b)(3) Unless licensed as an insurance agent, insurance broker or insurance consultant with respect to the relevant kinds of insurance, no person, firm, association or corporation shall receive any money, fee, commission or thing of value for examining, appraising, reviewing or evaluating any insurance policy, annuity or pension contract, plan or program or shall make recommendations or give advice with regard to any of the above.

N.Y. Ins. Law § 2102(b)(4) (McKinney 2000) sets forth exemptions, for attorneys, actuaries or certified public accountants and regular salaried officers or employees of insurers.

Please note that pursuant to N.Y. Ins. Law § 2119(a)(1) (McKinney 2000) compensation for consulting services must be based on a written memorandum, signed by the party to be charged and specifying or clearly defining the amount or extent of such compensation. Section 2119 provides, in relevant part, as follows:

(a)(1) No person licensed as an insurance agent, broker or consultant may receive any fee, commission or thing of value for examining, appraising, reviewing or evaluating any insurance policy, bond, annuity or pension or profit-sharing contract, plan or program or for making recommendations or giving advice with regard to any of the above, unless such compensation is based upon a written memorandum signed by the party to be charged and specifying or clearly defining the amount or extent of such compensation.

(a)(2) A copy of every such memorandum or contract shall be retained by the licensee for not less than three years after such services have been fully performed.

(b)(1) No person licensed as an insurance agent, broker or a consultant may receive any compensation, direct or indirect, as a result of the sale of insurance or annuities to, or the use of securities or trusts in connection with pensions for, any person to whom any such licensee has performed any related consulting service for which he has received a fee or contracted to receive a fee within the preceding twelve months unless such compensation is provided for in the memorandum or contract required pursuant to subsection (a) hereof.

(b)(2) This chapter shall not prohibit the offset, in whole or in part, of compensation payable under subsection (a) hereof by compensation otherwise payable to such consultant as agent or broker as a result of such sale of insurance or annuities or the use of securities or trusts in connection with pensions, if any such offset is provided for in the written memorandum or contract required under subsection (a) hereof.

## Question No. 2

N.Y. Ins. Law § 2102(a)(1)(McKinney 2000), as amended by Chapter 687 of the Laws of 2003, prohibits any person, firm, association or corporation from acting as an insurance agent or broker in this state without having the authority to do so by virtue of a license issued and in force pursuant to the provisions of Article 21 of the Insurance Law.

N.Y. Ins. Law § 2101(a) (McKinney 2000), as amended by Chapter 687 of the Laws of 2003, defines the term "insurance agent" as:

(a) [A]ny authorized or acknowledged agent of an insurer, fraternal benefit society or health maintenance organization issued a certificate of authority pursuant to article forty-four of the public health law, and any sub-agent or other representative of such an agent, who acts as such in the solicitation of, negotiation for, or sale of, an insurance, health maintenance organization or annuity contract, other than as a licensed insurance broker . . . (emphasis supplied)<sup>1</sup>

N.Y. Ins. Law § 2101(c) (McKinney 2000), as amended by Chapter 687 of the Laws of 2003, defines the term "insurance broker" as:

(c) [A]ny person, firm, association or corporation who or which for any compensation, commission or other thing of value acts or aids in any manner in soliciting, negotiating or selling, any insurance or annuity contract or in placing risks or taking out insurance, on behalf of an insured other than himself, herself or itself or on behalf of any licensed insurance broker . . . (emphasis supplied)<sup>2</sup>

Thus, any person, including an insurance consultant, who does not fall within the definitions contained in Sections 2101(a) or (c), is precluded from engaging in the solicitation, negotiation or procurement of insurance without becoming separately licensed as an insurance agent or broker. It should also be noted, however, that pursuant to Section 2102(b), insurance agents and brokers are not required to become separately licensed as insurance consultants to provide consulting services. Additionally, an insurance agent or broker may charge a commission for placing insurance and a consulting fee for providing consulting services only if the consulting agreement so provides, in accordance with Section 2119(a) and (b) as quoted above.

## Question No. 3

N.Y. Ins. Law § 109(a) (McKinney 2000) makes every violation of any provision of the Insurance Law a misdemeanor, unless such violation constitutes a felony. Accordingly, a person who charges fees for consulting services without the appropriate license could receive a prison sentence of up to one year in duration.<sup>3</sup> Any criminal sanctions are in addition to any other penalty provided by law with respect to such violation.<sup>4</sup>

N.Y. Ins. Law § 327 (McKinney 2000) authorizes the Superintendent to maintain and prosecute an action against any person subject to the Insurance Law to obtain an injunction restraining such person from doing any acts in violation of the Insurance Law. The court may grant an injunction if it finds that a defendant is threatening or is likely to do any act in violation of the Insurance Law, and that such violation will cause irreparable injury to the interests of the people of this state.

In the alternative, the Superintendent may bring an administrative proceeding pursuant to Article 24 of the Insurance Law to have the violation declared a determined violation. Following such proceeding, if the activities constituting the determined violation have not been

discontinued, the Superintendent, through the Attorney General, may bring an action to enjoin such person from engaging in such determined violation.<sup>5</sup>

#### Question No. 4

N.Y. Comp. Codes R. & Regs. tit. 11, § 34.5 (Regulation 125) provides, in relevant part, as follows:

In a headquarters location and each satellite office, the establishing agent or broker must prominently display the license or licenses of the supervising person or persons responsible for that place of business.

Thus, Regulation 125 requires the establishing agent or broker to prominently display the license or licenses of the supervising person or persons responsible for the agents or broker's place of business. Pursuant to Section 34.2(b) of Regulation 125, the supervising person or persons must also be licensed as an agent or broker in accordance with Article 21 of the Insurance Law. If the agent is acting as the supervising person, then the agent must display its license at its place of business.

However, even where no such requirement may apply, an insurance agent or broker should provide a client with evidence of licensing if requested. Information regarding licensing status is available from the Department.

#### Question No. 5

Mr. A and Mr. B are licensed by the Department as insurance agents to transact life and health insurance and variable annuities business. However, ABC Co. is not licensed by the Department. Thus, these insurance agents may only transact insurance business in their individual names, and not under the name of ABC Co.

For further information you may contact Senior Attorney Pascale Joasil at the New York City Office.

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<sup>1</sup> The statute lists exemptions from this licensing requirement.

<sup>2</sup> The statute lists exemptions from this licensing requirement.

<sup>3</sup> Penal Law § 70.15 (McKinney 1998).

<sup>4</sup> N.Y. Ins. Law § 109(b) (McKinney 2000).

<sup>5</sup> N.Y. Ins. Law § 2407 (McKinney 2000); See also N.Y. Gen. Bus. Law §349 (McKinney 1996).