

THE SURPLUS LINE ASSOCIATION

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October 29, 1957

NO. 61

BULLETIN TO ALL MEMBERS:

RE: LETTER FROM THE INSURANCE DEPARTMENT REGARDING
THREE YEAR MALPRACTICE CERTIFICATES

The question of the issuance of three year malpractice certificates by the members was submitted to the Insurance Department recently by the chairman of the Malpractice Committee and the writer.

The following is the Insurance Department's reply:

"We have carefully considered the question you propounded to us as to whether malpractice insurance could be written for a term of three years at three times the currently lowest admitted market rate, with no deduction or credit for paying the full three year premium in advance. It is conceded, we understand, that the admitted market does not offer three year malpractice policies at a discount and that non admitted insurers may not lawfully do so.

We believe you will agree that the present market, admitted and non-admitted, for casualty lines in general, and malpractice insurance in particular, is such that rate increases are generally conceded to be imminent. We see no alternative, therefore, but to conclude that the principal reason an insured would be influenced to pay three full annual premiums in advance would be to obtain the possibility of preserving for himself the continuance of the current rate for three years, notwithstanding the rate increases contemplated shortly to be effected. As a matter of fact, it is difficult to understand why a person would ever desire to pay three full annual premiums in advance, particularly in connection with business coverage, other than to obtain, at least in his opinion, a rate advantage. If his purpose were to assure to himself the continuance of a particular coverage which he desired, a guarantee by the insurer of the renewability of the policy and a waiver of its right to cancel would be more appropriate than would merely the payment of premiums in advance.

For the foregoing reasons, and under present market conditions, at least, we believe it must be presumed that any three year premium paid in advance for malpractice insurance was paid for the purpose of obtaining a rate advantage over admitted insurance and is in violation of Section 1763 of the California Insurance Code.

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The foregoing, however, is not to be construed necessarily to have any relation to coverages other than malpractice coverage under present market conditions, and similar questions in other classes of insurance as to coverages for terms of longer than one year must be considered on their own merits as the conditions and circumstances then appear."

Would please ask that the members be guided by the above.

Thomas A. Scadden

MANAGER

EBW:ml