**IN THE MISSOURI DEPARTMENT OF INSURANCE,**
**FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION**

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| **In Re: NATIONAL GUARDIAN** | ) | |
| **LIFE INSURANCE COMPANY** | ) | |
| **SERFF TRACKING NUMBER** | ) | **Case No. 131023568C** |
| **NGLI-129215976** | ) | |

## ORDER DISAPPROVING FORM FILING

Upon review and consideration of the filing of National Guardian Life Insurance Company, SERFF Tracking Number NGLI-129215976, specifically Forms NSA-1006(IS)2012-MO and NSA-1006(IS)(SC)2012-MO the Deputy Director DISAPPROVES said forms for the reasons stated below.

## FINDINGS OF FACT

1. John M. Huff is the Director of the Department of Insurance, Financial Institutions and Professional Registration, State of Missouri ("Director" of the "Department").

2. National Guardian Life Insurance Company ("National"), NAIC Number 66583, is a foreign life and health insurance company organized pursuant to the laws of the state of Wisconsin and transacting insurance business in the state of Missouri pursuant to a Certificate of Authority issued by the Director.

3. Pursuant to §376.405,[1] insurance companies licensed to transact business in this state may not deliver or issue for delivery in this state a policy of group accident or group health insurance unless the form has been approved.

4. The Division of Market Regulation (the "Division") is designated pursuant to section 374.075 with the review of forms that are filed by insurance companies.

5. National filed policy forms with the Director via the System for Electronic Rate and Form Filing ("SERFF") on September 23, 2013, with a SERFF Tracking Number of NGLI-129215976 ("Filing").

6. The Filing contains, in pertinent part, forms: NSA-1006(IS)2012-MO, identified as Blanket Student Accident Insurance ("Group Policy"); and NSA-1006(IS)(SC)2012-MO, identified as Blanket Student Accident Insurance ("Summer School Group Policy").

[1] All statutory citations are to RSMo (Supp. 2013).

7. On October 4, 2013, National amended the Filing and replaced the Group Policy and Summer School Group Policy with amended forms. The replacement forms are the subject of this Order.

8. On page 9 of the Group Policy and page 8 of the Summer School Group Policy under the section titled Entire Contract; Changes, National states:

> Any statement made by the Policyholder or by an applicant will, in the absence of fraud, be deemed a representation and not a warranty. No such statement will void the insurance or reduce the benefits thereunder unless contained in the written Application.

9. On page 7 of the Group Policy and pages 6-7 of the Summer School Group Policy under the section titled Notice of Claim, National states:

> We must receive written notice of Injury. It must be received within 20 days of the date the claim commences or as soon as reasonably possible.

10. On page 7 of both the Group Policy and the Summer School Group Policy under the section titled Proofs of Loss, National states:

> The Insured must provide Us written proof of loss. It must be provided to Our Home Office within 90 days of the loss or as soon as reasonably possible. Proof provided more than one year late will not be accepted, unless the Insured had no legal capacity in that year.

## CONCLUSIONS OF LAW

11. The Director shall approve only those policy forms that are in compliance with Missouri insurance laws, and "which contain such words, phraseology, conditions, and provisions which are specific, certain and unambiguous and reasonably adequate to meet needed requirements for the protection of those insured," pursuant to §376.405.

12. The Director may disapprove a form filed with the Department, and in doing so must state the reasons for the disapproval in writing, pursuant to §376.405.

### National's Filing Does Not Substantively Provide All Provisions Required In a Group Policy Under Section 376.426

13. Section 376.426 states in relevant part:

***No policy of group health insurance*** shall be delivered in this state unless it contains in substance the following provisions, or provisions which … are more favorable…:

* * *

2) A provision that the validity of the policy shall not be contested, except for nonpayment of premiums, after it has been in force for two years from its date of issue, and that ***no statement made by any person covered under the policy relating to insurability shall be used in contesting the validity of the insurance with respect to which such statement was made after such insurance has been in force prior to the contest for a period of two years during such person's lifetime nor unless it is contained in a written instrument signed by the person making such statement***; except that, ***no such provision shall preclude the assertion at any time of defenses based upon the person's ineligibility for coverage under the policy or upon other provisions in the policy***;

(3) A provision that a copy of the application, if any, of the policyholder shall be attached to the policy when issued, that ***all statements made by the policyholder or by the persons insured shall be deemed representations and not warranties*** and ***that no statement made by any person insured shall be used in any contest unless a copy of the instrument containing the statement is or has been furnished to such person or, in the event of the death or incapacity of the insured person, to the individual's beneficiary or personal representative***;

* * *

(8) ***A provision that written notice of claim must be given to the insurer within twenty days after the occurrence or commencement of any loss covered by the policy. Failure to give notice within such time shall not invalidate nor reduce any claim*** if it shall be shown not to have been reasonably possible to give such notice and that notice was given as soon as was reasonably possible;

* * *

(10) A provision that … in the case of claim for any other loss, ***written proof of such loss must be furnished to the insurer within ninety days after the date of such loss. Failure to furnish such proof within such time shall not invalidate nor reduce any claim if it was not reasonably possible to furnish such proof within such time, provided such proof is furnished as soon as reasonably possible and in no event, except in the absence of***

***legal capacity of the claimant, later than one year from the time proof is otherwise required***;

(11) A provision that ***all benefits payable under the policy*** ... ***shall be payable not more than thirty days after receipt*** of proof and that, subject to due proof of loss...[.]

(Emphasis added.)

14. National's Group Policy and Summer School Group Policy are not compliant with Missouri insurance laws. Both the Group Policy and the Summer School Group Policy, under the section titled "Entire Contract; Changes," provide that statements made by the insured will be deemed a representation and not a warranty, in the absence of fraud. The policies then provide that "[n]o such statement will void the insurance or reduce the benefits thereunder unless contained in the written Application."

    a. Under §376.426(2), the insurer is not precluded from asserting a defense based upon an insured's ineligibility for coverage and may utilize a provision stating such. In this instance, the provision appears to utilize this language to some extent.

    b. However, pursuant to §376.426(3) all statements that are made by an insured must be considered representations and not warranties. As such, if an insured's statement is not related to eligibility, which is governed by subsection 2, then it must be considered a representation and not a warranty. The statute does not permit for the substantive provision to utilize an exception for fraudulent statements. Stating that benefits will not be reduced and insurance will not be voided if the statement is not contained within the application still permits a statement not related to eligibility to be treated as a warranty rather than representation if fraudulent. Therefore, this provision is not substantively similar to 376.426(3).

    As such, the Group Policy and Summer School Group Policy do not comply with the laws of this state as required by §376.405.

15. National's Group Policy and Summer School Group Policy are not compliant with Missouri insurance laws. Under the section titled "Entire Contract; Changes," neither the Group Policy nor the Summer School Group Policy contain a required substantive notice provision. With respect to statements being used against an insured, neither the Group Policy nor the Summer School Group Policy substantively provide notice to the insured that "in the event of the death or incapacity of the insured person, [a copy of the statement is to be furnished] to the individual's beneficiary or personal representative,"

as required by §376.426(3). As such, the Group Policy does not comply with the laws of this state as required by §376.405.

16. Neither National's Group Policy nor Summer School Group Policy is compliant with Missouri insurance laws. Under the section titled "Notice of Claim," National provides that written notice of claim must be given to it within 20 days. However, the Group Policy and the Summer School Group Policy do not substantively provide a statement notifying the insured that "failure to give notice within such time shall not invalidate nor reduce any claim," as required by §376.426(8). As such, the Group Policy and Summer School Group Policy do not comply with the laws of this state as required by §376.405.

17. Neither National's Group Policy nor Summer School Group Policy is compliant with Missouri insurance laws. Under the section titled "Proofs of Loss," National provides written proof of loss must be given to them within 90 days. However, the Group Policy and the Summer School Group Policy do not substantively provide a statement notifying the insured that "failure to give notice within such time shall not invalidate nor reduce any claim," as required by §376.426(10). As such, the Group Policy and Summer School Group Policy do not comply with the laws of this state as required by §376.405.

18. After review and consideration of the policy forms included in the National's Filing, the company has failed to demonstrate its compliance with Missouri law as enumerated herein.

19. While there may be additional reasons as to why these policy forms do not comply with Missouri's insurance laws, the reasons stated herein are sufficient to disapprove the forms.

20. Each reason stated herein for disapproval of a policy form is a separate and sufficient cause to disapprove such form.

21. National's Group Policy and Summer School Group Policy do not comply with Missouri law. As such, said forms are not in the public interest.

22. This Order is in the public interest.

**IT IS THEREFORE ORDERED** that Forms NSA-1006(IS)2012-MO and NSA-1006(IS)(SC)2012-MO are hereby **DISAPPROVED.** National Guardian Life Insurance Company is hereby prohibited from delivering or issuing for delivery any policies of group health insurance utilizing said forms.

**SO ORDERED, SIGNED AND OFFICIAL SEAL AFFIXED THIS** 8 th day of November, 2013.

**JAMES R. McADAMS**
**DEPUTY DIRECTOR**

## NOTICE

**TO: National Guardian Life Insurance Company and any unnamed persons aggrieved by this Order:**

You may request a hearing on the disapproval of these forms. You may do so by filing a pleading with the Director of the Department of Insurance, Financial Institutions and Professional Registration, P.O. Box 690, Jefferson City, MO 65102, within 30 days after the mailing of this notice pursuant to 20 CSR 800-1.030.

## CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of November, 2013, a copy of the foregoing Order and Notice was

Served via certified mail addressed to:

Mark Lorin Solverud
President
National Guardian Life Insurance Company
4539 Deerling Trail,
Middleton, WI 53562

and via First Class US Postal Mail addressed to:
Peggy Kratz
Senior Policy Forms Specialist
National Guardian Life Insurance Company
PO Box 1191
Madison, WI 53701

Amy Teeler