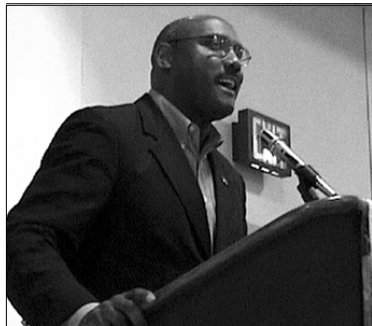


Nichols: States Must Adopt Uniform Market Conduct Standards — or Face Demise

By Scott Hooper and Kim Moore
REGULATOR staff writers

NEW ORLEANS — If regulation of insurers’ market conduct doesn’t change, says George Nichols III, then the states’ right to regulate insurance will be lost.



NAIC President George Nichols

Yet it won’t be Congress or consumer groups that take regulation away from the states, but rather regulators choosing to give up their role, the Kentucky insurance commissioner and president of the National Association of Insurance Commissioners told an overflow audience at the 2000 edition of the IRES Career Development Seminar last month in New Orleans.

“It will be us giving it up because we have chosen to be protective, we have chosen to say that my state is the best way to do it, we have chosen to say that the way I have done market conduct must continue,” he said.

Nichols stressed he was speaking for himself on this issue, since the NAIC has not taken as strong a position on uniform market conduct standards as he has.

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Holy Cow! The New Orleans CDS was terrific! Highlights and Photos Pages

10-17



Steve Martuscello takes IRES helm

NEW ORLEANS — Stephen M. Martuscello, a New York regulator and longtime IRES board member, is the new national president of the Insurance Regulatory Examiners



Martuscello

Society.

Martuscello was elected at the Society’s annual meeting at the New Orleans Hyatt Regency. He is a Principal Insurance Examiner with the New York State Insurance Department. He took over from outgoing IRES President Angela K. Ford, Senior Deputy Commissioner, North Carolina Insurance Department.

Other officers elected at the Society’s annual meeting:

PRESIDENT-ELECT: Jann Goodpaster, Chief Market Conduct Examiner, Oregon Department of Insurance.

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From the President

It was a great seminar for all!

To everyone who attended the 2000 Annual IRES CDS, I hope you enjoyed yourself and learned things that will be helpful to you professionally. To all of you who were unable to attend, you missed a wonderful opportunity to interact with other insurance regulators, insurance company personnel and invited speakers and panelists. It also was nice to see old friends and make new ones.



From all reports our CDS was a large success. One of the few complaints I over-

heard was how difficult it was to choose one breakout session over another. This certainly speaks well for the quality of the program we offer to our attendees. I am proud that the CDS continues to attract more and more participants. This year we had approximately 525 attending our seminar, with many paying their own expenses.

Speaking of records, we also had the largest number of new AIE-CIE designees in our history — 41. To all of you, congratulations on a job well done. This is the future of IRES and we need to encourage new people to join and promote the benefits of achieving designations.

I would also like to thank my predecessor, Angela Ford, for her effort toward making IRES a stronger and better organization. Her leadership skills are something I will try to emulate in the year ahead.

The 2000 President's Award recognized Christel Szczesniak and Wayne Cotter. Both have contributed to the success of IRES. Christel is one of our former Presidents and was the 2000 Educational Committee chairperson who had overall responsibility for this year's CDS. Wayne as

Editor of *The Regulator* has raised the quality and standards of our newsletter.

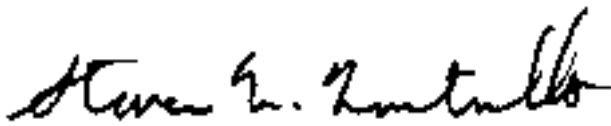
Another person I would like to thank is Michelle Muirhead, who despite having her pocketbook stolen, did a fine job in her first time as the CDS chairperson. It wasn't so hard, was it Michelle?

Our friend Bill Bailey is another person who helps to make the CDS a success. His insurance knowledge, enthusiasm, oratorical skills and ability to moderate panels help keep his sessions interesting and focused.

Our organization is also grateful for the participation and support of NAIC President and Kentucky Insurance Commissioner George Nichols III. We also recognize the contributions of Jim Long, North Carolina's Commissioner (who said he works for Angela); Mike Pickens, Commissioner of Arkansas; Carroll Fisher, Commissioner of Oklahoma; Karen Suter, Commissioner of New Jersey and Mississippi Commissioner George Dale.

I truly believe that the more Commissioners are made aware of our organizations through their participation, the more favorably they will treat and support IRES. Special thanks to David Chartrand and his staff of Susan, Paula, Joy, Scott, and Art. They are a big reason for the success of IRES. I have gotten to know them professionally and personally. You could not meet a finer group of people.

Last, but not least, I would like to acknowledge and thank all the individuals who in any small way contributed to the 2000 CDS. It was a job well done. Our goal now is to make the 2001 in Baltimore even better.



IRES PRESIDENT

Cotter, Szczesniak receive IRES President's Award

NEW ORLEANS — A regulator from Colorado and another from New York are the recipient's of the Year 2000 IRES President's Awards. Outgoing President Angela Ford made the announcements here



An award for Szczesniak...

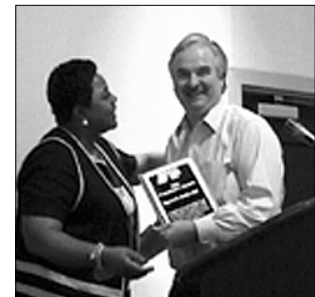
during the Society's annual meeting and Career Development Seminar.

One of the awards went to longtime IRES Board member Christel Szczesniak of the Colorado

Division of Insurance. President Ford

noted that Szczesniak has devoted countless hours of volunteer work to IRES and its members over the years, particularly in the education and training area. She has served, among other things, as President of the Society as well as chair of the IRES Education Committee. She also has been a regular speaker and presenter at IRES training programs.

The other President's Award recipient was Wayne Cotter of the New York State Insurance Department. Cotter was cited for his work as editor of *The Regulator*. President Ford noted that Cotter has taken the publication to a level of



...and one for Cotter

readership and professionalism that "has made us all extremely proud." Szczesniak is Regulatory Administrator for the Colorado Division and a technical expert on property-casualty insurance and enforcement issues. She chairs the Colorado Workers Compensation Cost Containment Board.

Cotter is Director of Research for the Public Affairs & Research Bureau at the New York Department. He previously was editor of the department's monthly newsletter. He became editor of *The Regulator* in 1998.

Regulators Grapple with Privacy Concerns

By Scott Hooper and Kim Moore
REGULATOR staff writers

Americans are crying out for more privacy protection — but how close they are to achieving it remains up in the air.

According to a recent Harris Poll, 84% of Americans are concerned about threats to personal privacy, and 78% believe consumers have lost control over how their personal information is used.

The newest fear is that financial holding companies — umbrella corporations created under the Gramm-Leach-Bliley Financial Modernization Act of 1999 (GLB) that may own both banks and insurance companies — may share information among the banks and insurance companies within the holding company. For example, a homeowner applying for a home-improvement loan might find that his lender knows about his health problems courtesy of its health insurer subsidiary.

And for some reason, the new banking-insurance legislation — which delegated enforcement of privacy regulations to the states — does not directly address the privacy of health data.

With an eye toward those Harris Poll numbers, President Clinton has called for stronger laws to protect consumers' financial privacy, and to expand their right to know.

Clinton's proposal would require banks and insurers to develop privacy policies and make them available to customers, whether or not the companies plan to actually share the data. The idea is that if companies provide consumers with written privacy policies up front, consumers could shop around for the company offering the best protection.

In addition, each year customers must be sent a notice on privacy provision disclosures. After reviewing the disclosures, customers are given the chance to "opt out," which would deny the institution the right to share non-public data with outside entities

or affiliated companies.

"No one should have to worry that the results of their latest physical exam will be used to deny them a home mortgage or a credit card," Clinton said.



S.900 Update

Whether or not the president's proposal goes anywhere in this election year, there is movement on the privacy front — and it's happening at the state level.

There are a number of privacy provisions in GLB, including a requirement that consumers be provided with written privacy policies up front, giving them the ability to shop around for the best protection.

Financial institutions have until next July 1 to comply with the new provisions of GLB.

However, Title V of the bill delegates enforcement of privacy rules to the state. And, in an unusual move, it allows states to enact more restrictive laws — say, requiring opt-in, in which consumers must specifically authorize sharing of their personal data, in place of the less restrictive opt-out.

"There is no specified deadline for the states to act," said Carolyn Scott, general counsel for the National Association of Insurance Commissioners. "But if we don't act, then you leave a void, which is going to be a problem."

Scott feels there's a consensus among state insurance regulators that they do want to pass rules.

A draft model code for state-level privacy protection is being revised following NAIC's summer meeting in Orlando. If you have questions in the meantime, John Fielding in NAIC's Washington office is point man on this issue. His phone number is 202-624-7790. ■

NARAB Fears Moving States to Uniformity

By *Scott Hooper*
REGULATOR staff writer

Uniformity in agent-broker licensing has been a hot topic for many years, indeed for decades. But now that last year's passage of the Gramm-Leach-Bliley Financial Modernization Act has given state insurance regulators a deadline, things are suddenly moving rapidly.

Gramm-Leach-Bliley clearly has prompted the states to adopt uniform licensing. The stick the new law holds over the states is NARAB, short for the National Association of Registered Agents and Brokers, which would take over the task if a voluntary system is not in place within three years.

That means that if states representing a majority of the nation's commercial-lines premiums haven't adopted uniformity within three years — or at least moved to accept out-of-state licenses by reciprocity — this new federal entity will be imposed on them.

Now, that isn't as negative as it sounds, since even if NARAB were to take over agent licensing it wouldn't exactly represent a federal takeover. That's because a majority of its governing board, as well as its chairman, would be state insurance commissioners.

But it's starting to look as if it's moot anyway. Several legislatures already have approved the necessary changes, and a couple of other states could probably make the changes via regulations, rather than legislation. Best of all, though, there doesn't seem to be any reason to doubt the rest of the states will go along with uniformity or reciprocity in time to avoid NARAB.

That's because, unlike many other federal mandates, uniform agent-broker licensing seems to have no opposition.

Many proponents of uniformity are the agents, although the companies are behind it as well. More to the point, there doesn't seem to be a down side.

No consumer groups have begun to campaign against it, and even states such as Texas that have become known for restrictions against out-of-town players have jumped on board with both feet.

"Regulators really do understand the value of moving to nationwide uniformity," said Carolyn Scott, general counsel of the National Association of Insurance Commissioners. "But there are a few road bumps in the way — and it's still early."

"It's not too early to act, but something of this magnitude takes a while to filter through to all the potential interested parties."

Several states already have acted, including Kentucky, home state of NAIC president George Nichols, but most are still considering just what action to take. As time goes by, the pressure to act will be greater, if only because legislators and regulators alike will increasingly be importuned by agents and brokers.

"One of the things that is going on right now is that the trade groups on a national level are talking to their local affiliates," said Scott of the NAIC.

One of those trade groups is the Washington, D.C.-based Council of Insurance Agents and Brokers, where Nicole Allen, director of state affairs, has an enviable task: pushing for passage of a proposal that has little or no opposition, except for specific provisions, such as licensing exceptions for customer service representatives (**Editor's Note:** See "Roundtable" article on licensing of Customer Service Representatives, p. 14).

"I think it will eventually happen," said Allen.

"Whether or not it will happen in time to forestall NARAB I don't know, but it will happen."

She said New Hampshire has already passed the necessary legislation, Missouri has passed the portion



S.900 Update

continued on next page



S.900 Update

continued from previous page

of the NAIC's model act that allows for reciprocity, and North Carolina did pretty much the same in its shortened '00 session, although that state also adopted the model bill's five standardized lines.

The California legislature is also considering a licensing bill this year, although Allen said it contains nothing from the model act.

In the meantime, NAIC's National Insurance Producer Registry (NIPR) is setting up an electronic licensing pilot project in four states — Colorado, Ohio, Iowa and North Carolina — with start-up slated for November.

Approving only reciprocity, not uniformity, is one trend that doesn't seem particularly worrisome. Scott, for one, believes that many states may go that route as a stopgap, to avoid NARAB and achieve a level of uniformity quickly — and then come back later and pass the rest of the model code.

"Each state has to assess its situation," she said, "but in the long run everyone will want to address the uniformity issues.

"The states really understand the value of uniformity," she added.

NAIC President George Nichols of Kentucky agrees that states are now more likely to adopt reciprocity, but has openly criticized states (most recently at the IRES Career Development Seminar in New Orleans) for not moving faster on uniform producer licensing.

For additional information, check with NAIC's Ross Myers (rsmyers@naic.org) or Tim Mullen (tmullen@naic.org).



New AIE/CIE designees honored in New Orleans

NEW ORLEANS — The Year 2000 class of new AIE and CIE designees was honored here at the IRES annual meeting and Career Development Seminar.

Jann Goodpaster, Oregon, chair of the Accreditation & Ethics Committee, noted that the regulators earning the designations had spent many hours in classrooms or at home studying to advance their regulatory careers.

The designees who were able to attend the CDS also were treated to a special Tuesday evening dinner in the city's French Quarter.



The class of CIE designees



The class of AIE designees

Steve Martuscello of New York is new IRES president

continued from page 1

VICE PRESIDENT: Paul J. Bicica, Consumer Services Chief, Vermont Department of Banking, Insurance, Securities and Health Care Administration

SECRETARY: Ed Mailen, Fraud Investigator, Kansas Insurance Department

TREASURER: R. Weldon Hazlewood, Principal Insurance Market Examiner, Virginia State Corporation Commission-Bureau of Insurance

AT LARGE OFFICER: Pamela Donnewald, Assistant Deputy Director, Illinois Insurance Department.

IRES Board members are elected by the



[Left to right] IRES President-Elect Jann Goodpaster, newly elected President Steve Martuscello and Past President Angela Ford

general membership to four-year terms. Board members elected to new terms at the Society's New Orleans meeting are: Pamela Donnewald, Illinois; Joseph Fritsch, New York; Angela Ford, North Carolina; Michael Hessler, Illinois;



IRES Board Members (left to right) Gary Domer, Scott Laird and Gerry Milsky

Douglas Freeman, Missouri; Kirk Yeager, Colorado; Gerald Milsky, Virginia; John Reimer, Kansas; Dudley Ewen, Maryland.

Other IRES board members are: Scott Laird, Texas; Howard Magill, Tennessee; Gary Domer, independent; Michelle Muirhead, Nebraska; Bruce Ramge, Nebraska; Cynthia Smith-Campbell, Missouri; Christel Szczesniak, Colorado; Nancy Thomas, Delaware; Tommy Thompson, Oklahoma; Shirley Jones, North Carolina; Gary Evans, Delaware. ■

Welcome, new IRES Members

Scott P. Borchert, MN
Stephanie Cook, WI
Dave Diehl, MD
Malissa Drake, LA
Debora Finn, AIE, MD
Linda Gonzales, LA
Philip S. Gray, NJ
Ted A. Hamby, AIE, NC
Craig Jackson, DE
Tobie Jacobs, MD
Carol Junkin, AIE, OH
Ryan Maxwell, DE
Ann M. McClain, AIE, FL
Richard M. McGavock, AIE, OR
Thomas D. McIntyre, Multi-State
Robert H. Moore, Multi-State
Terry O. Orndorff, AL
David K. Pierce, AIE, MO
Edsel Roberts, Jr., TX
Jamie Sanftleben, WI
Frederick Santiago, MD
Elizabeth S. Slice, SC
Wayne Stephens, AIE, FL
Parker Stevens, DE
Melinda B. Warren, VA
James Wright, III, MA

C.E. News

The deadline to submit your CE credits for the current compliance period is Oct. 1, 2000.

A missed deadline or failure to comply with the NICE program will result in the suspension of your designation. In other words, your designation will no longer be recognized by IRES and in good standing.

To reinstate your designation, current policy would require you to bring your IRES annual membership dues current; pay a \$60.00 reinstatement fee; pay up to 3 years of unpaid CE fees; as well as earn and report up to 3 years of past due CE credit hours. It is well worth your time and dollars to keep your CE credits current.

Attention CDS attendees – if you did NOT pick up your attendance certificate at the CDS in New Orleans, you are required to report your CE hours to the IRES CE Office. The maximum credit for attending the CDS, if you did not pick up your certificate, is 12 CE hours. For those of you who picked up your CDS attendance certificate, you have been granted 15 CE hours automatically and do not need to file a compliance report.

Also, please remember to include documentation, such as a certificate of attendance or some other reasonable evidence of completion, when submitting CE credits.

More questions? Call us
at 913-768-NICE

N · I · C · E

Download your NICE manual from the IRES web site

Lost your N.I.C.E. continuing education manual? No problem. You can download a replacement copy from the IRES web site. Assuming, that is, you have a computer and a modem.

All the rules and regulations of the IRES mandatory continuing education program, including reporting forms, are found in the manual. To obtain it electronically, just get yourself onto the worldwide web and follow these directions.

Go to the IRES web site at www.go-ires.org.

At the IRES home page, click on the icon that says "Accreditation." Near the bottom of the Accreditation page you'll see an underlined page link that says continuing education. Click there. You'll wind up on the page headed, Accreditation — **NICE**.

At the bottom of the NICE page you'll see an explanation for viewing and/or downloading a copy of the manual in the Adobe Acrobat Reader format. Adobe's Acrobat program allows you to receive and "read" documents created in another program without actually having a copy of that original program.

Just follow the instructions to click and immediately view/download the file. There's also a clickable link that will take you to Adobe's web site to obtain a free copy of its Reader program if you don't have one already.

The actual steps for downloading an Acrobat Reader file often depend on which web browser program you use (Netscape, AOL, etc.) and whether you are a PC or Macintosh user. Using Netscape on most computers, clicking on the file link will cause the file to immediately open on your screen (assuming you already have Acrobat Reader installed as a "plug in" for Netscape.) You can then simply view it, or you can follow Netscape's commands to save the file directly to your hard drive to view later.





IRES Accreditation Curriculum

Adopted by IRES Board of Directors, August 1999
EFFECTIVE: 9/1/2000

To receive copies of the full Accreditation Application form, contact the IRES office at 913-768-4700, or send an e-mail to ireshq@swbell.net



You can also view this form on-line at the ires web site: www.go-ires.org

The AIE designation will be automatically granted to regulators who have a minimum of 2 years fulltime regulatory experience and who have obtained a CPCU, CLU, or FLMI designation. **You must send proof of your designation along with this application.**

Property and Casualty Educational Path These may be taken in any order. Passage of **any eight** of the following ten courses is necessary to obtain your AIE.*

- 1) INS 22— **Personal Insurance**
- 2) INS 23 — **Commercial Insurance**
- 3) AIC 34, 35 or 36 — **Claims (may only count 1)**
- 4) CPCU 4 — **Commercial Liability Risk Management & Insurance**
- 5) CPCU 5 — **Insurance Company Operations**
- 6) CPCU 6 — **The Legal Environment of Insurance**
- 7) CPCU 7 — **Management**
- 8) CPCU 9 — **Economics**
- 9) IR 201 — **Insurance Regulation**
- 10) AIAF 111 — **Insurance Accounting**

To obtain a CIE designation, you must take and pass **any four** additional courses. [American College course equivalents - shown in brackets - can be used as substitutes.]

- 1) FLMI 280 — **Principles of Life and Health Insurance** [HS 323]
- 2) FLMI 290 — **Life and Health Insurance Company Operations** [HS 323,324,325]
- 3) FLMI 320 — **Marketing Life and Health Insurance**
- 4) FLMI 340 — **Information Management in Insurance Cos.**
- 5) AIRC 410 — **Regulatory Compliance — Companies, Producers & Operations**
- 6) AIRC 420 — **Regulatory Compliance — Insurance and Annuity Products**

Life and Health Educational Path These courses may be taken in any order. Passage of **any eight** courses is necessary to obtain your AIE.* American College course equivalents [shown in brackets] can be used as substitutes.

- 1) FLMI 280 — **Principles of Life and Health Insurance** [HS 323]
- 2) FLMI 290 — **Life and Health Insurance Company Operations** [HS 323,324,325]
- 3) FLMI 310 — **Legal Aspects of Life and Health Insurance** [HS 324]
- 4) FLMI 320 — **Marketing Life and Health Insurance**
- 5) FLMI 330 — **Management of Organizations & Human Resources**
- 6) FLMI 340 — **Information Management in Insurance Companies**
- 7) FLMI 361 — **Accounting and Financial Reporting in Life and Health Insurance Companies**
- 8) ICA C1 — **Medical and Dental Aspects of Claims**
or
ICA C3 — **The Claims Environment** (candidates may choose between ICA C1 or ICA C3)
- 9) AIRC 410 — **Regulatory Compliance — Companies, Producers & Operations**
- 10) AIRC 420 — **Regulatory Compliance — Insurance and Annuity Products**

To obtain a CIE designation, you must take and pass **any four** additional courses:

- 1) INS 21 — **Principles of Insurance**
- 2) CPCU 5 — **Insurance Company Operations**
- 3) CPCU 6 — **The Legal Environment of Insurance**
- 4) AIC 34, 35 or 36 — **Claims (may only count 1)**
- 5) IR 201 — **Insurance Regulation**

The 2000 IRES Career Development Seminar



[clockwise from top left] A jazz trio awakens IRES attendees bright and early Monday morning at the New Orleans Hyatt. ■ Incoming President Steve Martuscello bids farewell to outgoing chief Angela Ford. ■ Jann Goodpaster of the Oregon department presiding over an Accreditation Committee meeting. ■ North Carolina Commissioner Jim Long (left with headset) and Arkansas Commissioner Mike Pickens are guests on Bill Bailey's nationally syndicated talk show broadcast live from the CDS hotel. ■ Three members of the New York contingent relax by the Mississippi (from l. to r.) Benita Hirsch, Susanne Cotter, Kathleen McQueen.



Also see CDS photo highlights at www.go-ires.org



[clockwise from top left] New Jersey Commissioner Karen Suter during a panel debate. ■ Attorney Lewis Melahn takes his turn. ■ Tommy Thompson and Paul Bicara listen to the luncheon remarks. ■ Sam Meyer of South Dakota preaches on producer licensing issues. ■ A rear view of the regulator-industry panel debate. ■ San Francisco technology expert Daniel Finnegan lecturing on internet/insurance trends. ■ CDS chair and Nebraska regulator Michelle Muirhead checking her script. ■ Sue Ezalarab of the Wisconsin Department with the mike.

New Orleans CDS



[clockwise from top right] We weren't sure if moderator Art Chartrand was interviewing the toy cow or checking its heartbeat, but he milked his regulator-industry panel for all it was worth.

- Art and the panel
- The IRES Accreditation Committee discusses AIE-CIE curriculum changes.
- Louisiana Commissioner Jim Brown welcomes everyone to New Orleans.
- IRES Board members Cynthia Smith-Campbell of Missouri and Dudley Ewen of Maryland.



'Accredit' market conduct, says NAIC chief

continued from page 1

Nichols knows excellence when he sees it. As Kentucky's commissioner, Nichols has worked hard to establish his department's first consumer protection division and its first fraud investigation division. He has also helped reduce Kentucky's life insurance premium taxes, abolish the state's annuities tax, oversee a new workers compensation law and foster stability in Kentucky's fragile health insurance market.

The commissioner, who chairs the NAIC's executive committee and its Financial Services Modernization Task Force, has also taken a leading role during his term as NAIC president — pushing for market conduct NAIC accreditation despite opposition from some of his peers.

The NAIC "accredits" state insurance departments that meet certain standards in their regulatory oversight practices, but most of the accreditation program focuses on financial solvency surveillance. Market conduct examination practices are not reviewed in the current accreditation program.

Nichols stood firm in his view that the only way to support 50 state regulations is to create as much uniformity as possible. That may sound paradoxical, but it allows regulators to justify their state having to do some things a little differently.

Those who believe their own way is the only way, said Nichols, are only providing additional support to those who would like to take it all away.

"If we, as insurance regulators across this country, cannot create a national approach where it is appropriate," he declared, "then we deserve to lose it."

Nichols started out the discussion on a lighter note, sharing a list from Beloit College demonstrating how much the world has change in the past 20-30 years. He noted that students entering college in the year 2000 do not know anything about 8-track tapes, Beta and life without MTV or remote controls. "They have never seen Larry Bird play," Nichols notes. "The Vietnam War is as ancient history to them as World War II, World War I and the Civil War. They do not care who shot JR and don't know who JR is."

Nichols also reiterated his strong belief in the future of insurance regulation. Participation by all of the states, regulators, commissioners, companies, agents, legislators, governors and consumers is the key

for success, he said. And a national approach to insurance regulation is a must.

Although many of his colleagues at the NAIC don't favor market conduct accreditation, he believes it is critical for regulators' survival in the future. Currently, of course, market conduct is not part of the accreditation process, but Nichols believes that now's the time to act and devise a market conduct accreditation procedure.

"We are not going to be able to say we're out there protecting consumers when there are no rules or standards that any of us are required to participate in," Nichols said. "That is what will hurt us, that is where we will fail."

He feels one key to success is to use more zone examinations and more multi-state examinations.

Nichols also stressed the importance of getting away from doing a comprehensive review every three to five years, as required by statute.

"We must be more focused on targeted examinations on a more frequent basis," he said, "coordinated so that we are addressing the needs of every consumer in every state where they are buying similar or like products. They are depending on us."



Publications award goes to Nichols

While in New Orleans, Nichols also was presented with IRES' prestigious Schrader-Nelson Publications Award. The Award honors the most outstanding contribution to the Society's newsletter, *The Regulator*, over the past year — in this



Nichols receives congratulations from REGULATOR Editor Wayne Cotter

case, Nichols' article on the importance of state regulation in last November's issue (See IRES Web site for full text of article).

New Orleans Roundtable Offers Tasty Discourse

By Wayne Cotter, Editor

Like good jambalaya, a Commissioners' Roundtable demands the right combination of ingredients to produce the most flavorful results.

Commissioners' Gumbo

Select four highly seasoned commissioners

(two elected, two appointed)

Add a dab of NAIC executive expertise

Flavor with a large dose of Southern hospitality

Mix thoroughly

Let simmer two hours

(serve on a round table)

As might be expected, last year's Gramm-Leach-Bliley Financial Modernization Act (GLB) was the entrée of choice at the traditional kickoff to IRES' two-day annual seminar last month. Commissioners from

North Carolina, Oklahoma, Alabama and Kentucky gave their takes on this landmark financial services legislation, guided by moderator and master chef Bill Bailey.

Although the commissioners agreed the new law offers an opportunity for state regulators to increase efficiency and effectiveness of their operations, Oklahoma Commissioner Carroll Fisher reminded the audience that an insurance policy is fundamentally different from products offered by banks and securities firms.

Citing a recent speech by NAIC President George Nichols, Fisher pointed out that no legislation exists that forces individuals to open bank accounts or purchase securities. However, just about every state has laws mandating insurance coverage for its consumers. State residents who purchase such coverage have a right to expect a degree of oversight that exceeds that for most other financial services products, said Fisher.

Alabama's Mike Pickens said that the Gramm-Leach-Bliley Financial Modernization Act of 1999 (GLB) is compelling state regulators to communicate

more fully with federal regulators and warned that unless state regulation becomes more uniform, more efficient and more effective, it will be relegated to the dustbin of regulatory history.

Kentucky Commissioner George Nichols underscored the need for uniformity, noting that it's more than an effort by just a majority of the states. **(Editor's Note:** See front page story)

"If the 50 states do not strive for market conduct uniformity," said Nichols, "the ultimate result will be the death of state regulation." The NAIC's Statement of Intent, he said, is a "blueprint for where state regulation should be," but stressed the



North Carolina Commissioner Jim Long is not surprised by federal moves to encroach on state insurance regulation.

Statement is designed to achieve the best regulatory system, not necessarily to preserve state regulation.

The Scarlet “A’s”

Commissioner Jim Long of North Carolina singled out two trade associations (**Hint:** They both begin with the letter “A”) that are consistently throwing stumbling blocks in the path of enhanced state insurance regulation. He said he’s convinced these organizations will never be satisfied with any state-directed initiatives and that their ultimate goal is the complete dismantling of the existing regulatory structure.

Commissioner Nichols agreed, noting that the two associations consistently focus on abstractions such as “deregulation” without providing particulars. “And I can’t regulate concepts,” concluded Nichols.

Can the federal government interject itself into the regulation of insurance over the next few years? Easily, says Arkansas’ Mike Pickens. One way, he suggests, is through GLB, which prohibits insurance regulators from “significantly interfering” with the regulation of banking. “Who do you think,” asked Pickens, “will be interpreting that law?” Federal courts, of course, answered Pickens. Jim Long added that he would not be surprised to see the federal government eventually get involved in every aspect of insurance regulation *except* consumer complaints.

Agent/Broker Licensing

The role of agent/broker licensing in a post-GLB world was next on the agenda, with special attention to customer service representatives (CSRs). Used by some personal lines insurers to respond to consumer calls and inquiries, CSRs are not licensed by most states. CSRs do not, Pickens said, need a license if they are just adding a car for a customer or a piece of jewelry on the policy. But once they “sell, solicit or negotiate” insurance, they have crossed over the line.

Commissioner Fisher countered that an agent’s advice can forever affect the financial security of a family. That’s why it’s important, in Fisher’s view, to set a high standard of licensing for *anyone* in a position to influence a consumer’s insurance decisions.

Licensing of CSRs would be a nonissue, according



Mike Pickens of Arkansas (left) and Oklahoma’s Carroll Fisher differ on the role of licensing customer service representatives.

to Commissioner Nichols, if the states could adopt uniform licensing standards. “We wouldn’t be discussing the merits of licensing CSRs if we had uniform licensing because all these people could be licensed quickly and efficiently under such a system.” It’s the 50 different sets of rules and regulations that are compelling insurers to seek out licensing alternatives.

Responding to a question from an IRES member, Nichols acknowledged that reaching agreement on reciprocity is a more achievable goal by the GLB deadline of 2003 than reaching agreement on uniform agent/broker standards. However, he wonders why 50 states cannot agree on an elevated standard and abide by it.

continued on next page



When you come right down to it, an Internet insurance solicitation is no different than a TV or telephone solicitation.



**— Arkansas Insurance
Commissioner Mike Pickens**

New Orleans commissioner roundtable

continued from previous page

“After all,” said Nichols, “the highest agent standards in the country are still below those of a securities agent.”

E-Commerce

“When you come right down to it,” said Mike Pickens, “an Internet insurance solicitation is no different than a TV or telephone solicitation.” The product and companies still must be licensed and the transactions must follow the laws of the jurisdiction in which the transaction takes place.

Pickens does not believe, however, that complex products, such as variable life, should be sold on the Internet. For these products, face-to-face interaction is essential.

Commissioner Fisher distrusts the Internet for all but the most basic insurance sales. As a former agent, Fisher said he knows the importance of a knowledgeable agent guiding his or her customer through the insurance process. Commissioner Nichols, on the other hand, wondered whether insurance regulators should be

barring consumers from complicated insurance transactions over the Net when many of these same consumers feel savvy enough to purchase thousands of dollars in securities over the Internet without

benefit of professional advice.

Insurance regulation, said Nichols, will face the next big challenge when the first virtual insurance company applies for licensure. A company that handles all aspects of the insurance transaction — billing, claims, policy changes — over the Internet is

something that insurance regulators will have to grapple with over the next few years.

Staffing Woes

All four commissioners lamented the tight labor market for examiners, indicating the difficulties they experience attracting and maintaining staff. The problem will only get worse, said Fisher, when the economy turns sour and insurers begin facing financial problems. That’s when the states will need the experienced staff members that will no longer be there.

George Nichols mentioned that Kentucky is actively recruiting talented accounting interns from neighboring colleges. Kentucky pays them competitive rates and links them up with the best examiners in the Kentucky Department. The expectation is that these interns will consider full-time employment at the agency once they receive their degrees.

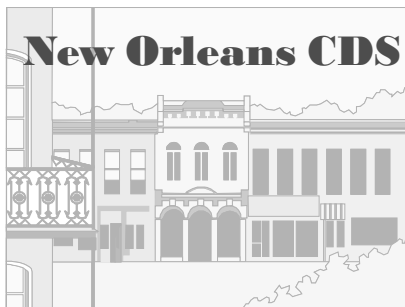
Kentucky also has inaugurated a unique experiment that allows financial examiners to work with their counterparts in the banking department. The goal is to develop a broader understanding of the issues that may arise in the wake of Gramm-Leach-Bliley.

The commissioners recommended that states be vigilant in communicating any staffing inadequacies to their state legislatures and civil service commissions. In addition, if a state insurance department has success stories to share, the commissioners stressed, make sure state legislators as well as the civil service commission are aware of them. Staffing requirements at insurance departments are unlike those of any other agency and their unique needs must be communicated to those who make a difference.

After all, without talented and knowledgeable staff, no set of rules — no matter how well intentioned — can adequately protect insurance consumers. ■



Nichols: “We must strive to attract and retain the best examiners.”



New Orleans CDS

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“If the states don’t strive for uniform market conduct standards, the ultimate result will be the death of state regulation.”

— NAIC President and Kentucky Insurance Commissioner George Nichols III

“ERISA is getting better. Now when the North Carolina Department contacts them, they try to get back to us within the same *year*.”

— North Carolina Insurance Commissioner Jim Long

“The way I look at it, 427,000 people asked me to do my job, only one person asked them.”

— Oklahoma Insurance Commissioner Carroll Fisher stating his preference for elected commissioners over appointed ones.

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REGULATORY ROUNDUP

ALABAMA — Governor signs guaranty fund reform bill

In May, Governor Don Siegelman signed into law Senate Bill 145, a guaranty fund reform bill that sets forth three key amendments to existing law. First, Senate Bill 145 carves out of the definition of “covered claim” any first party claims by an insured whose net worth exceeds \$25 million, including the aggregate net worth of the insured and its subsidiaries calculated on a consolidated basis. Second, the legislation expressly provides that the existing right of the Alabama Insurance Guaranty Association (“Association”) to sue or be sued includes the power to intervene as a party before any court in Alabama that has jurisdiction over an insolvent insurer. Finally, the legislation grants the Association the authority to recover the amount of any covered claim paid on behalf of any insured whose net worth exceeds \$25 million. Industry advocates praised the enactment of Senate Bill 145 for updating existing law to recognize the increased number of commercial lines insurer insolvencies. To view Senate Bill 145, visit www.state.al.us.

ILLINOIS — U.S. Supreme Court holds that HMO mixed eligibility and treatment decisions made through physician employees are not fiduciary acts under ERISA

The United States Supreme Court held on June 12, 2000 that mixed eligibility and treatment decisions made by an HMO, acting through its physician employees, are not fiduciary acts within the meaning of the Employee Retirement Income Security Act (ERISA). Plaintiff in this case sued her HMO in Illinois in connection with medical complications she suffered subsequent to her physician’s decision to delay certain diagnostic testing. The testing was delayed so that plaintiff could undergo the testing at a distant facility staffed by the HMO, rather than at a nearby hospital. Plaintiff sued defendants on several counts, including breach of an ERISA fiduciary duty. The Supreme Court reversed a Seventh Circuit holding in favor of plaintiff, underscoring that ERISA

The New York-based Stroock & Stroock & Lavan LLP Insurance Regulatory/Corporate Practice Group includes Donald D. Gabay, Martin Minkowitz, William D. Latza, and Vincent Laurenzano, an insurance finance consultant. They gratefully acknowledge the assistance of Todd Zornik, law clerk.

By
**Stroock & Stroock
& Lavan LLP**

permits fiduciaries to possess financial interests adverse to their beneficiaries. The court also distinguished this case from traditional breach of fiduciary duty cases because the decision at issue was both medical and financial in nature, rather than strictly financial. See *Pegram v. Herdrich*, 2000 U.S. LEXIS 3964.

ILLINOIS — Department of Insurance requests that insurers amend long-term care policies sold prior to the emergence of assisted living facilities

The Illinois Department of Insurance issued Company Bulletin CB 2000-05 in July requesting that long-term care insurers deliver an amendment form to policyholders whose policies were sold prior to the existence of assisted living facilities (ALF). The Department issued the bulletin after learning that some insurers are denying the claims of insureds living in ALFs because their policies make no reference to such facilities. The bulletin asserts that ALFs are legitimate long-term care facilities and, therefore, all policyholders have a reasonable expectation to have claims paid for care provided in such facilities. Accordingly, the bulletin asks long-term care insurers to offer to policyholders an amendment form on an accept-or-reject basis that would condition the payment of claims on specific benefit triggers so that claims from ALFs may be honored under the policy. To view CB 2000-05, visit www.state.il.us/ins/cb.

IOWA — Division of Insurance addresses reports of unfair marketing practices in the individual health benefit plan market

The Iowa Division of Insurance issued Bulletin 2000-2 in June to address recent reports of unfair marketing practices in the offering of basic and standard health insurance plans. Specifically, the Division objects to the following practices: requiring two rejections before a quote is issued for basic and standard plans; using rates not filed with the Division; and failing to issue quotes in a timely manner. The bulletin reminds insurers that they must comply with the regulatory requirements set forth in the Fair Marketing Standards identified in Iowa Code Section 513C.9 and Iowa Administrative Code 191-75.9. Among other requirements, carriers must supply price quotes to eligible individuals upon request. The bulletin

also directs carriers to verify that rates on file with the Division for basic and standard health plans are consistent with the rates currently used to provide quotes for such plans in Iowa. Violations of the regulatory requirements and rating practices described in the bulletin may constitute unfair trade practices under Chapter 507B of the Iowa Code. To view Bulletin 2000-2, visit www.state.ia.us/ins/bulletin/index.htm.

MASSACHUSETTS — Division of Insurance offers guidance on compliance with the Diabetes Cost Reduction Act of 2000

The Massachusetts Division of Insurance issued Bulletin 2000-05 in June, providing guidance to health insurers regarding the diabetes coverage provisions that the Division will consider to be in compliance with the requirements of Chapter 81 of the Acts of 2000, An Act Relative to Diabetes Cost Reduction. Chapter 81 requires health insurers, with certain exceptions, to provide benefits for specified diabetes-related items if such items are within a category of benefits or services for which coverage is otherwise provided in the policy. Bulletin 2000-05 sets forth five categories of benefits within which a carrier should provide the services and supplies mandated under Chapter 81. Any insurer that excludes the services and supplies mandated by Chapter 81 from any of the five categories will be deemed to be in violation of the law. To view Bulletin 2000-05, visit www.statel.ma.us/doi/bulletins. To view Chapter 81, visit www.ma.us/legis/laws/seslaw00.

NEW YORK — Recently amended no-fault auto insurance regulations declared null and void

On July 17, 2000, the New York State Appellate Division, First Department, affirmed a Supreme Court order and memorandum decision declaring null and void new no-fault automobile insurance regulations (“New Regulation 68”) promulgated last year by the New York Insurance Department. Petitioners in this matter, who included individual drivers as well as small business health care providers and medical suppliers who are compensated through the no-fault insurance system, sought a preliminary injunction against the Department to enjoin it from implementing the regulation. Petitioners objected to several New Regulation 68 provisions, including but not limited to a reduction of the maximum time period within which injured persons must notify no-fault insurers of an accident. The court invalidated New Regulation 68 citing failure by the Department to substantially comply with minimum requirements set forth in the State Administrative Procedure Act (SAPA) governing the promulgation of regulations by a state agency. For example, the court held that the Department’s Regulatory Flexibility Analysis failed to detail efforts to minimize

any adverse economic impact on small businesses such as health care providers and medical suppliers. See *Medical Soc’y of the State of New York, Inc. v. Levin*, available at www.nystla.org.

Following the court’s decision, the Department issued Circular Letter No. 24 (7/18/2000). The Circular Letter directs insurers and self-insurers to adjust their forms and procedures consistent with the court’s decision and to follow the provisions of the version of Regulation 68 in effect prior to the adoption of New Regulation 68. To view Circular Letter No. 24, visit www.ins.state.ny.us.

PENNSYLVANIA – Governor signs comprehensive tax legislation that includes a tax credit to offset a portion of property-casualty guaranty fund assessments

On May 24, Governor Tom Ridge signed into law Senate Bill 2, comprehensive tax legislation which, in part, grants insurers a premium tax credit in the event an assessment is issued by the Pennsylvania Property and Casualty Insurance Guaranty Association. Each insurer would receive a credit equal to the amount by which the assessment paid exceeds 1% of the insurer’s net direct written premiums. Any offset of guaranty fund assessments provided under the legislation would be applied in equal amounts during the five years following the assessment. Senate Bill 2 follows the insolvencies of Physicians Insurance Company and Physicians Insurance Exchange, and is expected to generate approximately \$160 million in offsets over the next five years. To view the bill, visit www.legis.state.pa.us/WU01/LI/BI/billroom.htm.

CORRECTION

The previous edition of REGULATORY ROUNDUP indicated that Colorado Senate Bill 106, a regulatory deregulation bill, eliminated a requirement that HMOs and PPOs submit for approval deductibles, coinsurance options, conditions, and limitations. This was incorrect. HMOs and PPOs were never required to make form filings in Colorado.

IRES CDS: Next Up

- **2001 — Baltimore. Aug. 5-7 Hyatt Regency Inner Harbor**
- **2002 – San Antonio. July 28-30 Hyatt Regency**
- **2003 — Scottsdale, AZ. Hyatt Gainey Ranch**

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√ Kathy Hoover of the Missouri Department of Insurance passed away Aug. 20, 2000 after a long illness. Kathy was a founding member of IRES and held the CIE designation. She also had earned the ALHC and ACS designations. She was a market conduct examiner-in-charge specializing in life and health examinations. She had directed many significant examinations including some early multi-state efforts. She was a graduate of UMKC and had previously been a customer services supervisor for Kansas City Blue Cross/Blue Shield.

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