

April 17, 1978

SUBJECT: INSURANCE

WITHDRAWN

Circular Letter No. 7, 1978
Addendum to Circular Letter
No. 7 (June 27, 1977)

TO: ALL INSURANCE BROKERS AND AGENTS LICENSED TO SELL LIFE, ACCIDENT AND HEALTH
INSURANCE

SUBJECT: INSURANCE POLICIES ISSUED BY EMPLOYEES' BENEFIT ORGANIZATIONS:

Employee's Security Benefit Association (ESBA), Bellevue, Washington;
Continental Employees' Benefit Association (CEBA), Lakewood, Colorado;
National Business Conference Employee Benefit Association (NBC), Sherman Oaks, California;
Northwest Federation of Independent Businesses, Inc. (NFIB), Boise, Idaho;
American Business Conference (ABC), Los Angeles, California;
American Association of the Healing Arts, Los Angeles, California;

Since the release of Circular Letter 7 (1977) with respect to ESBA and CEBA, this Department has received additional inquiries regarding purported "comprehensive health plans" offered by the following: ESBA, CEBA, NBC, NFIB, ABC, and the American Association of the Healing Arts, which provide major medical expense benefits and death benefits to their members on a self-funded, self-adjusting basis.

The selling of the above "benefits" constitutes the doing of an insurance business under the New York Insurance Law, and only a licensed insurer may offer such insurance policies in this state.

In addition to ESBA and CEBA, NBC, NFIB, ABC, and the American Association of the Healing Arts are not licensed to do an insurance business in New York, but contend they are exempt from the requirements of licensing and conformance to the New York Insurance Law because of provisions of the Employee Retirement Income Security Act, Public Law 93-406, ("ERISA")

Based on a review of the materials distributed by the above organizations, the applicable provisions of ERISA and regulations promulgated by the United States Department of Labor, the Office of General Counsel of this Department has concluded that ESBA, CEBA, NBC, NFIB, ABC, and the American Association of the Healing Arts are not employee benefit plans within the meaning of ERISA and, consequently, are not exempt from regulation under the New York State Insurance Law.

Any licensee of this Department who solicits, negotiates or effectuates any policy on behalf of ESBA, CEBA, NBC, NFIB, ABC, and the American Association of the Healing Arts would be subject to disciplinary action for having violated Sections 112, 117, 126 and other applicable provisions of the Insurance Law, and to the penalties provided therein which include suspension or revocation of all insurance licenses held and/or the imposition of monetary penalties.

Any other person who acts on behalf of ESBA, CEBA, NBC, NFIB, ABC, and the American Association of the Healing Arts in this state would be subject to monetary penalties for having violated Sections 41-a, 112 and 126 of the Insurance Law.

[SIGNATURE]

ALBERT B. LEWIS

Superintendent of Insurance