

**DEPARTMENT OF INSURANCE****Legal Division, Policy Approval Bureau**45 Fremont Street, 24th Floor  
San Francisco, CA 94105**Common Issues in PAB Filings**

This is a list of common issues in filings. This list is for informational purposes only and is not meant to be inclusive of all issues or all types of filings. Please apply all issues that apply to your filing. For instance, if you have a variable annuity contract apply the general issues as well as the annuity contract and the variable annuity contract issues.

## 1. General Issues

- a. Documents must have unique form numbers. (10 CCR § 2211.)
- b. Policies must include company name in appropriate font size and place. (Ins. Code § 430.)
- c. Cover letter fails to include the subdivision of 10 CCR § 2202(a) which best describes the product. (10 CCR § 2205(b).)
- d. Failure to include a complete statement of variability fully describing the range of values or the variable wording to be used in policies containing variable text or blanks (10 CCR §§ 2212 & 2213.)
- e. Failure to include Consumer Affairs Disclosure. (Ins. Code § 510.)
- f. Failure to comply with entire contract clause. (Ins. Code. § 10113.)
- g. Failure to comply with domestic partner statute. (Ins. Code § 381.5.)

## 2. Certificate of Assumption

- a. Insurer's cover letter should state the percentages of the business ceded or assumed. (Ins. Code §1011(c).)
- b. Failure to include the required notice set forth in *Baer v. Associated LICO*, 248 Cal.Rptr. 236 (1988). Per *Baer* the Certificate must contain the following notice:

PLEASE BE ADVISED THAT YOU RETAIN ALL RIGHTS WITH RESPECT TO YOUR POLICY/CERTIFICATE AGAINST YOUR ORIGINAL INSURER IN THE EVENT THE ASSUMING INSURER IS UNABLE TO FULFILL ITS OBLIGATIONS. IN SUCH EVENT YOUR ORIGINAL INSURER REMAINS LIABLE TO YOU NOTWITHSTANDING THE TERMS OF ITS ASSUMPTION AGREEMENT.

## 3. Insurance Code § 101 Products

- a. Individual Life Insurance Application
  - i. HIV related matters (Ins. Code §§799-799.10 & Health & Safety Code § 120980(f).)

- ii. Medical authorization compliance. ( Ins. Code § 791.06.)
  - iii. Failure to comply with 10 CCR § 2201 (c) and (d) re: distinctions between applications and enrollment forms.
- b. Variable Life Insurance Applications
  - i. Bulletin 87-3.
- c. Annuity Contracts
  - i. Failure to include Free Look provision. (Ins. Code § 10127.9.)
  - ii. Failure to include Free Look provision for Seniors. (Ins. Code § 10127.10.)
  - iii. Failure to include surrender charge disclosures for Seniors. (Ins. Code § 10127.13.)
- d. Variable Annuity Contracts
  - i. Failure to comply with the Variable Annuity regulations. (10 CCR § 2530.)
- e. Modified Guaranteed Annuity (MGA) Contracts
  - i. Failure to comply with the MGA regulations. (10 CCR § 2534.28.)
- f. Individual Life Insurance Policies
  - i. Failure to include Free Look for Individuals. (Ins. Code § 10127.9.)
  - ii. Failure to include Free Look provision for Seniors. (Ins. Code § 10127.10.)
  - iii. Failure to include surrender charge disclosures for Seniors. (Ins. Code § 10127.13.)
  - iv. Failure to adhere to contestability period in Ins. Code § 10113.5
- g. Variable Life Insurance Policies
  - i. Failure to comply with Bulletin 87-3.
- h. Group Life Insurance Policies
  - i. Policy incontestable after 2 years. (Ins. Code § 10206.)
  - ii. Group policy conversion rights. (Ins. Code § 10209(b).)
  - iii. Failure to include Free Look provision for Seniors. (Ins. Code § 786.)
  - iv. Failure to file Group Variable Life Insurance group master policies, certificates, etc. (Ins. Code § 10506(j).)

- i. Disability Waiver of Premium Rider (for individual life policy)
    - i. Failure to adhere to definition of Total Disability. (*Moore v. American United Life Ins. Co.* (1984) 150 Cal.App.3d 610.)
4. Insurance Code § 106 Products
- a. Disability Insurance Policies
    - i. Failure to review the definition of disability insurance under California law. (Ins. Code § 106.)
    - ii. Failure to include Free Look provision for Seniors. (Ins. Code §786.)
    - iii. Failure to comply with 10 CCR § 2232.5/ Ins. Code § 10350 when varies from Compulsory and Optional provisions commencing with 10 CCR §§ 2232.16 – 2232.41 and Ins. Code §§ 10350-10369.12.
    - iv. Discretionary clauses. (Ins. Code § 10291.5(b)(1).)
    - v. Out of State Group disability (associations) master policy and certificate advertised or marketed to 55+ must be filed and reviewed in California (Ins. Code § 10207.507.)
    - vi. Failure to comply with HIV testing laws. (Ins. Code §§ 799.06 & 10291.5(c)(2); Health & Safety Code § 120980(f).)
    - vii. No HIV statement on application. (Ins. Code § 10291.5(c).)
    - viii. Failure to use mandated policy language (Ins. Code § 10350) or specified additional language (Ins. Code § 10369).
    - ix. Information disclosures that violate Ins. Code § 791.06
    - x. Failure to comply with Ins. Code § 10380 re: fraud warning as to materiality.
    - xi. Failure to use Compulsory Uniform Provisions (or Optional Provisions) commencing with Ins. Code §§ 10350-10369.12 and 10 CCR §§ 2232.16 – 2232.41.
    - xii. Inquiry re: HIV status (Health and Safety Code § 120980(f) & Bulletin 86-3 (1996).)
  - b. Disability Income Policies
    - i. Disability income insurance (defined in Ins. Code § 799.01(i)) is disability insurance in California (Ins. Code § 106(a)) but is NOT “health” insurance (Ins. Code 106 § (b)(5)).
    - ii. Failure to adhere with definition of Total Disability. (*Moore v. American United Life Ins. Co.* (1984) 150 Cal.App.3d 610.)
  - c. Accidental Death and Dismemberment and Accidental Injury Policies
    - i. AD&D and accidental injury is disability insurance in California (Ins. Code § 106(a)) but is NOT “health” insurance (Ins. Code § 106 (b)(1)).

- ii. Failure to comply with Minimum Benefits Regulations (10 CCR §§ 2220.13 & 2220.14) with respect to individual policies. Also comes up in Graded Life Benefit policies.
  - iii. Individual policies indemnity provisions. (Ins. Code § 10291.5(b)(8)(A)-(C).
  - iv. AD&D and AI riders to life policies subject to Ins. Code §§ 10271 & 10292.
- d. Travel Insurance Policies
  - i. Failure to comply with Ins. Code §10296, Required Statement.
- e. Hospital Indemnification & Critical Illness Policies
  - i. Failure to include required statement. (Ins. Code § 10198.61.)
- f. Medicare Supplement Policies
  - i. Failure to include statement in Ins. Code § 10192.18(g).
- g. Health Insurance Policies
  - i. Failure to include mandated health benefits (Ins. Code. §§ 10119 – 10176.61), and mandated offers (Ins. Code. §§ 10119.6 – 10176.6).
  - ii. Impermissible restrictions on reconstructive surgery benefit. (Ins. Code. § 10123.88.)
  - iii. Arbitration disclosure. (Ins. Code § 10123.19.)
  - iv. No domestic partner coverage. (Ins. Code § 10121.7 & Family Code §297)

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