



STATE OF NEW YORK
INSURANCE DEPARTMENT
25 BEAVER STREET
NEW YORK, NEW YORK 10004

David A. Paterson
Governor

Eric R. Dinallo
Superintendent

**Circular Letter No. 27 (2008)
November 21, 2008**

TO: All Persons, Firms, Associations, or Other Entities Licensed, Authorized, Registered, Certified, or Approved Pursuant to the New York Insurance Law, and all Health Maintenance Organizations Holding a Certificate of Authority Pursuant to Article 44 of the Public Health Law (collectively, “Licensees”)

**RE: Recognition in New York of Marriages Between Same-Sex Partners
Legally Performed in Other Jurisdictions**

STATUTORY REFERENCES: N.Y. Ins. Law Article 23 and §§ 2402, 2403, and 4224

On February 1, 2008, the Supreme Court of the State of New York, Appellate Division, Fourth Department held in Martinez v. Monroe Community College, 50 A.D.3d 189, 850 N.Y.S.2d 740 (4th Dep’t), lv. to appeal denied, 10 N.Y.3d 856 (2008), that plaintiff Patricia Martinez’s marriage to her same-sex partner was entitled to recognition in New York State as a matter of comity. The case arose after Ms. Martinez’s employer denied Ms. Martinez’s application to obtain health care benefits for her same-sex spouse, whom she had married in Canada, even though the employer provided such benefits to the opposite-sex spouses of its employees.

Shortly thereafter, the Insurance Department received inquiries from both consumers and industry seeking guidance as to how insurance companies, in the wake of Martinez, should treat same-sex couples in marriages legally performed outside the State of New York.

On May 6, 2008, the New York Court of Appeals – the State’s highest court – dismissed Monroe County’s application for leave to appeal. In the absence of guidance from the Court of Appeals or the other Departments of the Appellate Division, Martinez therefore is controlling precedent for all trial courts in the State. See, e.g., Mountain View Coach Lines, Inc. v. Storms, 102 A.D.2d 663, 664 (2d Dep’t 1984); see also People v. Turner, 5 N.Y.3d 476, 482 (2005) (following Mountain View); Tzolis v. Wolff, 39 A.D.3d 138, 142 (1st Dep’t 2007).

In a legal opinion issued on November 21, 2008 in response to an inquiry (the “Opinion”), the Department’s Office of General Counsel (“OGC”) concluded that same-sex spouses to marriages legally performed outside of New York must be treated as spouses for purposes of the New York Insurance Law, including all provisions governing health insurance. The Opinion finds that in light of the controlling authority of Martinez and several opinions from lower New York courts consistent with that holding, marriages between same-sex couples that

are valid when entered into outside of New York must be recognized in this State for purposes of interpreting the Insurance Law. Thus, where an employer offers group health insurance to employees and their spouses, the same-sex spouse of a New York employee who enters into a marriage legally performed outside the State is entitled to health insurance coverage to the same extent as any opposite-sex spouse. Moreover, the Opinion notes that its analyses and conclusions are applicable to all other kinds of insurance, too.

Accordingly, the Department expects all licensees to comply with Martinez and the Opinion by recognizing the marriages of same-sex couples legally performed in other jurisdictions, which includes providing all legally married couples with the same rights and benefits, regardless of the sex of the spouses. Further, an insurer's refusal to extend health insurance or other coverage on an equal basis to same-sex and opposite-sex spouses may constitute an unfair act or practice under Insurance Law §§ 2402 and 2403, and/or unfair discrimination under Insurance Law Article 23 and § 4224. In addition, an employer's failure to treat same-sex and opposite-sex spouses equally for purposes of health insurance coverage or otherwise may violate New York Executive Law § 296(1)(a), which also targets unlawful discrimination. See Martinez, 850 N.Y.S.2d at 743. The Department fully expects that, to the extent necessary, licensees will file new policy forms or policy form amendments with the Department to ensure compliance with the law, as expressed in this Circular Letter, controlling judicial precedent, and the Opinion.

The Department's construction of the Insurance Law also is consistent with a memorandum dated May 14, 2008 from the Counsel to the Governor, which asked all State agencies to review their policy statements, regulations, and statutes to ensure that terms such as "spouse," "husband," and "wife" are construed in a manner, consonant with Martinez, that encompasses marriages of same-sex couples legally performed outside the State, unless barred by some other provision of law. In a decision dated September 2, 2008, the Supreme Court of the State of New York, Bronx County, upheld the legal validity of that memorandum. See Golden v. Paterson, Index No. 260148/2008 (Sup. Ct. N.Y. Cty. Sept. 2, 2008).

Any general questions regarding the content of this Circular Letter may be directed to Deputy Superintendent and General Counsel Robert H. Easton at (212) 480-5282 or Deputy General Counsel Martha A. Lees at (212) 480-2290. For specific questions about policy form submissions, please contact the following Insurance Department personnel:

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Sincerely,

Robert H. Easton
Deputy Superintendent and General Counsel