

No. **2021-6958**

**Official Order
of the
Texas Commissioner of Insurance**

Date: 08/12/2021

Subject Considered:

National Indemnity Company
1314 Douglas Street, Suite 1400
Omaha, Nebraska 68102-1944

Consent Order
TDI Enforcement File No. 27348

General remarks and official action taken

This is a consent order with National Indemnity Company (NICO). For several years, NICO failed to adequately oversee and ensure its employees' honest completion of Texas licensing courses and appropriate proctoring of licensing exams. NICO's failure to exercise more active oversight and control resulted in employee impropriety during licensing examination courses and lapses in proctoring examinations. As a result, false or misleading information was submitted to the department through a pre-licensing education provider, upon which the department made licensing decisions. NICO has agreed to pay a \$100,000 administrative penalty and has required all its licensed employees holding Texas adjuster licenses to retake their licensing examinations at a third-party independent testing facility. NICO has additionally agreed to require all of its future employees who apply for any Texas adjuster license to take their licensing examinations at a third-party independent testing facility.

Waiver

NICO acknowledges that the Texas Insurance Code and other applicable law provide certain rights. NICO waives all these rights, and any other applicable procedural rights, in consideration of the entry of this consent order.

Findings of Fact

Licensure and Background

1. NICO is a fire and casualty insurance company holding a certificate of authority to transact business in Texas.

NICO's Testing Environment

2. Prior to October of 2019, NICO employees needing Texas insurance licenses were tasked with fulfilling the requisite training and testing requirements necessary to acquire those licenses.
3. NICO management identified 2021 Training, LLC (2021 Training) as a vendor, among others, in documentation given to employees needing licenses and when NICO employees sought suggestions for pre-licensing education providers.
4. NICO allowed its employees to sit for course examinations on-site in the NICO offices and to use other NICO employees as proctors for such courses, including courses offered by 2021 Training.

The Internal Complaint

5. In or around July of 2019, NICO received an internal complaint (the Complaint) alleging that certain NICO employees had cheated on a Texas adjuster licensing examination administered through 2021 Training's adjuster pre-licensing course.
6. According to the Complaint, these NICO employees had collaborated in answering the test questions without proper supervision by a proctor.
7. NICO commenced an investigation of the Complaint and found that examination impropriety had, in fact, taken place. NICO learned the employees had collaborated on answering the test questions and were not appropriately proctored. However, the results of the exam in question were not submitted to the department in connection with a request for licensing.
8. Three NICO employees involved in the Complaint were suspended for periods of time without pay.

9. In August 2019, TDI received an anonymous "whistle-blower" complaint alleging similar facts to the Complaint, and TDI requested that NICO respond to the allegations.
10. On September 24, 2019, NICO contacted department staff to discuss the Complaint.
11. By letter dated October 30, 2019, NICO also reported to the department the results of its investigation and internal audit, more fully described below, as well as the remedial actions it voluntarily took as a result.

NICO's Internal Audit

12. Based on the results of its initial investigation, NICO also initiated a broader, internal audit of its employees' practices in satisfying the requirements for acquiring a Texas adjuster license (the Internal Audit).
13. NICO's Internal Audit found deficiencies with the proctoring of the Texas licensing exams where one NICO employee acted as a proctor for another, finding a general laxity with the continuous monitoring of examination administrations that made it impossible for NICO to assure TDI that the examinations had been properly administered. In particular, the Internal Audit found:
 - a. nine instances in which NICO employees admitted to using a study aid while taking the examination, two of which did so at home in a setting absent a proctor;
 - b. one additional instance in which a NICO employee took the examination at the employee's home in a setting absent a proctor; and
 - c. one instance in which a NICO employee signed three proctor forms without continuously observing the exam administration.
14. NICO's failure to adequately exercise oversight and control of testing conditions resulted in the submission of false or misleading examination results and course completion documentation with employees' license applications upon which the department made licensing decisions.

NICO's Remedial Actions

15. In response to the findings of the Internal Audit, NICO took the following remedial actions to ensure that no further testing improprieties would occur in the future:
 - a. NICO required all employees holding Texas adjuster licenses who took the Texas licensing exam under the proctoring of another NICO employee to immediately retake the Texas licensing exam at a dedicated third-party independent testing facility;
 - b. NICO further required that all future applicants for any claims adjusting license, including Texas applicants, take their licensing examinations at a third-party independent testing facility;
 - c. NICO additionally reassigned oversight and monitoring of adjuster licensing compliance from staff in its claims department to its licensing compliance department; and
 - d. NICO required all NICO claims personnel to repeat their ethics training course.
16. This consent order fully and finally resolves the issues addressed in this consent order involving NICO and its current or former employees who hold Texas adjuster's licenses as of the date of this order. This consent order does not resolve any allegations or violations with respect to any other TDI complaints, proceedings, or other investigations.

Conclusions of Law

1. The commissioner has jurisdiction over this matter under TEX. INS. CODE §§ 82.051 – 82.055, 84.021 – 84.044, and 801.051 – 801.053.
2. The commissioner has the authority to informally dispose of this matter as set forth in TEX. GOV'T CODE § 2001.056; TEX. INS. CODE §§ 36.104 and 82.055; and 28 TEX. ADMIN. CODE § 1.47.
3. NICO has knowingly and voluntarily waived all procedural rights to which it may have been entitled regarding the entry of this order, including, but not limited to, issuance and service of notice of intention to institute disciplinary action, notice of

2021-6958

Commissioner's Order
National Indemnity Company
Page 5 of 7

hearing, a public hearing, a proposal for decision, rehearing by the commissioner, and judicial review.

4. Pursuant to TEX. INS. CODE § 441.051(3), an insurer may be considered delinquent or threatened with delinquency when an insurer conducts its business fraudulently, such as allowing its employees to: commit fraudulent, dishonest, or deceitful conduct on or off its premises; submit false, deceptive, and misleading records to TDI; and to create an environment or culture in which the insurer condones that conduct without preventative oversight or procedural safeguards.
5. NICO violated TEX. INS. CODE §§ 541.003 and 541.052(a) by making or placing before the public, or directly or indirectly causing the placement before the public, of false student records containing untrue, deceptive, or misleading assertions, representations, or statements regarding the proper completion of adjuster prelicensing course and examination requirements.

Order

It is ordered that National Indemnity Company pay an administrative penalty of \$100,000 within 30 days from the date of this order. The administrative penalty must be paid as instructed in the invoice, which the department will send after entry of this order.

It is further ordered that NICO require all of its employees who apply for any Texas adjuster license to take their licensing examinations at a third-party independent testing facility.

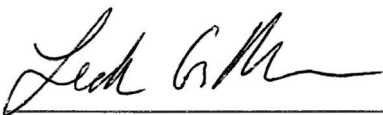
Commissioner of Insurance

DocuSigned by:
Doug Slape
C77A87C8C21B435...

By: _____

Doug Slape
Chief Deputy Commissioner
TEX. GOV'T CODE § 601.002
Commissioner's Order No. 2018-5528

Recommended and reviewed by:



Leah Gillum, Deputy Commissioner
Enforcement Division



Kaycee Crisp, Staff Attorney
Enforcement Division

Affidavit

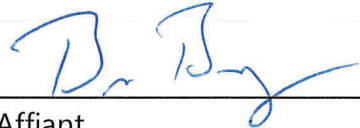
STATE OF CT §
 §
COUNTY OF Fairfield §

Before me, the undersigned authority, personally appeared Bruce Byrnes
who being by me duly sworn, deposed as follows:

"My name is Bruce Byrnes. I am of sound mind, capable of making this
statement, and have personal knowledge of these facts which are true and correct.

I hold the office of Vice President and am the authorized representative of
National Indemnity Company. I am duly authorized by said organization to execute this
statement.

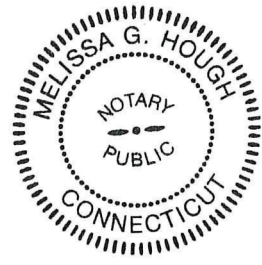
National Indemnity Company has knowingly and voluntarily entered into the foregoing
consent order and agrees with and consents to the issuance and service of the same by
the commissioner of insurance of the state of Texas."




Affiant

SWORN TO AND SUBSCRIBED before me on 8/5/21, 2021.

(NOTARY SEAL)





Signature of Notary Public
MELISSA G. HOUGH
NOTARY PUBLIC
CONNECTICUT
MY COMMISSION EXPIRES MARCH 31, 2025

Printed Name of Notary Public