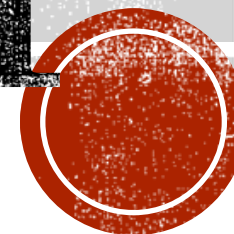


DUTIES TO REPORT MISCONDUCT

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August 29, 2018
Austin Insurance Regulatory Bar Event



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Disclaimer

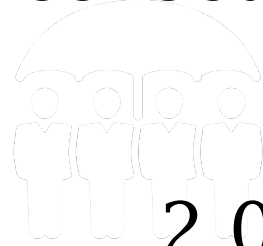


TEXAS INSURANCE MARKET

9th largest insurance market in the world

\$152 billion in premiums

630,000 licensed agents and adjusters



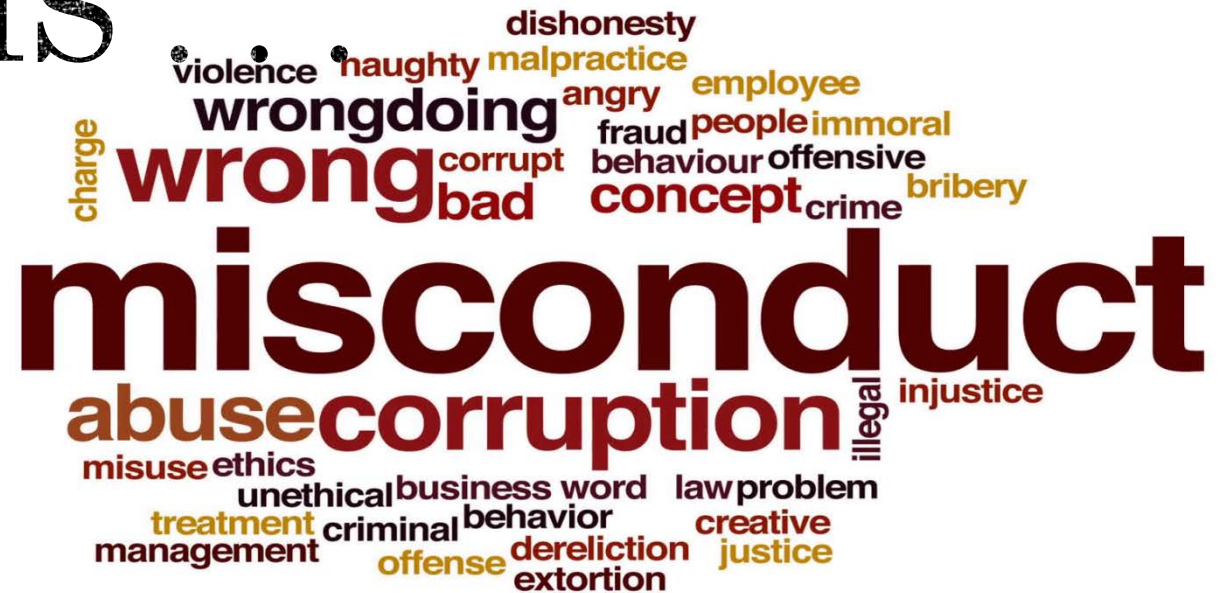
2,095 licensed companies



MISCONDUCT



MISCONDUCT IS



A dereliction of duty; unlawful, dishonest, or improper behavior, especially by someone in a position of authority or trust.

Source: Black's Law Dictionary (10th ed. 2014)



DUTY IS . . .



A legal disadvantage that is owed or due to another and that needs to be satisfied; for every duty somebody else has a corresponding right.

Source: Black's Law Dictionary



STATUTORY DUTY FOR INSURERS

TEX. INS. CODE § 81.003

Insurer must notify and deliver order/judgment to TDI within 30 days after (1) suspension or revocation of right to transact business in another state or (2) receipt of order to show cause why license should not be suspended or revoked.

Regulator Observations:

- Consequences?
 - Civil penalty of \$500
 - Suspension/revocation if willful
- S.B. 1012 (85th R.S.) eff. 9/1/17

Industry Observations:

- Definition of “insurer”
- Final order v. show cause order
- Confidentiality?



STATUTORY DUTY FOR AGENTS AND AGENCIES

TEX. INS. CODE § 4001.252

Agents must notify TDI of (a) felony convictions and (b) administrative action by a financial or insurance regulator.

Agencies must notify TDI of (a) felony convictions and (b) “an event for which notification would be required under Section 81.003”

Regulator Observations:

- Timing? monthly vs. 30 days
- Consequence?
- FINRA

Industry Observations:

- Differences between agent and agency obligations as to (i) convictions and (ii) other regulator actions



STATUTORY DUTY FOR INSURERS AND AGENTS

TEX. INS. CODE § 4001.206

Insurer or agent must immediately report termination of appointment of agent “for cause” to TDI.

Regulator Observations:

- Insurer and agent - § 4001.003
- Appointments - § 4001.201
- But, subagents - § 4001.205
- Variances in report content
- What does “for cause” mean?
- Consequences?

Industry Observations:

- What must be reported?
- Confidentiality considerations
- Immunity considerations



STATUTORY DUTY FOR ANY “PERSON”

TEX. INS. CODE § 701.051

A “person” must report a “fraudulent insurance act” that has been or is about to be committed in this state within 30 days of the “person” making a determination or having a reasonable suspicion.

Regulator Observations:

- What is such an act?
- *In re Crawford & Co.*



Industry Observations:

- Who is a “person”?



WHERE AND HOW TO REPORT SUSPECTED FRAUD

TEX. INS. CODE § 701.051

Report the information in writing to TDI's insurance fraud unit; and may also report to another "authorized governmental agency" (law enforcement or prosecuting attorney). A report to the fraud unit is a report to the latter.

 www.tdi.texas.gov/fraud/ 

- Consumers - complaint filing process vs. fraud report
- Industry - NAIC's Online Fraud Reporting System (OFRS)
- Download forms in word and pdf
 - Fax to: 512-490-1001
 - Email to: FraudReport@tdi.texas.gov
 - Snail-mail to 333 Guadalupe or P.O. Box 149336
- Questions?
 - 1-888-327-8818 or 1-800-252-3439 or FraudUnit@tdi.texas.gov



IMMUNITY FOR “FURNISHING INFORMATION”

TEX. INS. CODE § 701.052

A person is not liable in a civil action (including for libel or slander), and a civil action may not be brought against the person, for “furnishing information” related to a suspected, anticipated, or completed fraudulent insurance act

Regulator Observations:

- Oral or written bulletin or report
- Exceptions
- Consequences?

Industry Observations:



ETHICAL DUTIES FOR ATTORNEYS

TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT

- **Duty to Report to Prevent Client from Committing Crime or Fraud Likely to Result in Death or Substantial Bodily Harm:**
 - Rule 1.05(e): Duty to reveal client confidential information “clearly establishing” that a “client is likely to commit a criminal or fraudulent act that is likely to result in death or substantial bodily harm” to the extent necessary to prevent client from committing such an act.
- **Duty to Report to Tribunal:**
 - Rule 3.03(a)(2): “A lawyer shall not knowingly . . . fail to disclose a fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act.”



ETHICAL DUTIES FOR ATTORNEYS

TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT

- **Duty to Report to Third-Parties:**

- Rule 4.01(b): “In the course of representing a client a lawyer shall not knowingly . . . fail to disclose a material fact to a third person when disclosure is necessary to avoid making the lawyer a party to a criminal act or knowingly assisting a fraudulent act perpetrated by a client.”

- **Duty to Report Attorney Misconduct:**

- Rule 8.03



A CHECKLIST FOR THE PRACTITIONER

- ❑ Who has a duty to report?
- ❑ How is misconduct defined?
- ❑ What triggers the duty or what level of certainty is required?
- ❑ What are the deadlines?
- ❑ What must be included in the report?
- ❑ Who is the proper recipient of the report and how should it be delivered?



CHECKLIST (CONTINUED)

- ❑ What confidentiality protections exist?
- ❑ What immunity protections exist?
- ❑ What are the consequences of failing to report?

REGULATOR TIPS:

- ❑ Include contact names and details in the report.
- ❑ Provide evidence (documentation) to support the report.
- ❑ Less isn't always more. Remember TEX. INS. CODE § 38.001.



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