

# How To Work With Your Regulators: Reporting, Ethics, and Confidentiality OR “Regulate Your Enthusiasm”

*Presentation Date: July 6, 2023*

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# Housekeeping

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- Continuing Education
  - 1 hour of Producer Continuing Education
  - 1 hour of Continuing Legal Education (1 hour of ethics)
- Activity Number for Attorneys:
  - Webex: 249205
  - In-person: 249204
- Unless stated otherwise, all citations will be to the Revised Statutes of Nebraska.
- If you need the PowerPoint or any help during the presentation,
  - Message AJ Raaska ([AJ.Raaska@Nebraska.gov](mailto:AJ.Raaska@Nebraska.gov))
  - She will be monitoring the chat for questions
- Certificates of completion will be emailed to participants
- Stay For The Poll At The End (QR Codes Located on Tables)

# \*Disclaimer\*

- Every situation is evaluated on a case-by-case basis, and the information contained in this presentation is intended to be purely informational and may or may not apply in any specific circumstance.
- If you have a question concerning a specific filing or situation, please contact a member of the Department and we would be more than happy to discuss the situation.



# Michael Anderson

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- Michael Anderson is a staff attorney with the Nebraska Department of Insurance and has been with the Department for just over three years.
- Previously, Michael served in the Missouri Medicaid Fraud Control Unit.
- Michael graduated from Creighton University in 2011 and from Creighton University School of Law in 2014.

# Megan VanAusdall

- Megan VanAusdall serves as a staff attorney with the Nebraska Department of Insurance and has been with the Department since January 2022.
- Previously, Megan served as Legal Counsel with the Missouri Department of Insurance, and as an Assistant Public Defender in Dunklin County, Missouri.
- Megan graduated from Southern Illinois University School of Law in 2016 and Bradley University in 2013.

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# Agenda

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- Basics of NDOI's Authority
- Reporting Requirements of Insurers
  - Civil Immunity and False Reporting
  - Terminations
  - Initial Department Contacts
- Record Retention Requirements
- Confidentiality Provisions in Chapter 44
- Nebraska's NSA Enforcement
- Q&A

# JULY-O-WEEN



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DEPARTMENT OF INSURANCE



# Basic's of NDOI's Authority

## Chapter 44

“Within the intent of this chapter, the business of apportioning and distributing losses arising from specified causes among all those who apply and are accepted to receive the benefits of such service, is public in character, and requires that all those having to do with it shall at all times be actuated by good faith in everything pertaining thereto, shall abstain from deceptive or misleading practices, and shall keep, observe and practice the principles of law and equity in all matters pertaining to such business. **Upon the insurer, the insured, and their representatives, shall rest the burden of maintaining proper practices in said business.”**

- Neb. Rev. Stat. §44-101

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# Power of the Director

“The Department of Insurance shall have general supervision, control, and regulation of insurance companies, associations, and societies and the business of insurance in Nebraska, including companies in process of organization.”

“The Director of Insurance shall be the chief administrative officer of the department. The director shall have the power and duty to enforce and execute all the insurance laws of this state and to adopt and promulgate all needful rules and regulations for the purpose of carrying out the **true spirit and meaning** of Chapter 44 and all laws relating to the business of insurance...”

**-Neb. Rev. Stat. §44-101.01**

# Other Sources of Authority

- 210 Neb. Admin. Code
  - On Secretary of State’s Website
- Internal Guidance Documents
  - <https://doi.nebraska.gov/>
    - Public Information → Guidance Documents



Number	Title	Issue Date
<b>A - Life</b>		
IGD -- A1	Use of Retained Asset Accounts	October 20, 2022
IGD -- A2	Credit Life Insurance and Credit Accident and Health Insurance Rates	October 20, 2022
<b>B - Health</b>		
IGD -- B1	Interpretation of "Covered Services" in New Laws about Dental Plans	October 20, 2022
IGD -- B2	Notice of Applicants for PLHSO License to Bid on HHS Medicaid	October 20, 2022
IGD -- B3	Allowable Electronic Materials for Individual and Group Major Medical	October 20, 2022
IGD -- B4	Out-of-State Health Care Providers Using Telemedicine to Treat Patients in Nebraska, Excess Liability Fund Coverage Option	October 20, 2022
IGD -- B5	Filing Guidance for Individual and Small Employer Health and Dental Plans in Nebraska	April 20, 2023
IGD -- B6	Composite Rating for Small Group Markets	October 20, 2022
IGD -- B7	Regulation of Provider Sponsored Organizations and Health Care Providers in the Business of Insurance	October 20, 2022
<b>C - Property &amp; Casualty</b>		
IGD -- C1	Credit Insurance	October 20, 2022
IGD -- C2	Underwriting Refusals Based Solely on Previous Non-Renewal, Rejection or Cancellation of Property and Casualty Insurance	October 20, 2022
IGD -- C3	Defense Within Limits Clauses	October 20, 2022
IGD -- C4	Payment of Special Costs on Property Losses	October 20, 2022
IGD -- C5	Use of On-Board Sensors for Automobile Rating	October 20, 2022
IGD -- C6	Gap Contracts in Nebraska	October 20, 2022
IGD -- C7	Motor Vehicle Service Contracts	October 20, 2022
IGD -- C8	Workers' Compensation Insurance	October 20, 2022
IGD -- C9	Filing Procedures for Property and Casualty Insurance Companies	October 20, 2022
IGD -- C10	Title Insurance Companies, Mortgage Policies, Fees	October 20, 2022
IGD -- C11	Appraisal Language in the 1943 Standard Fire Policy of the State of New York	October 20, 2022
IGD -- C12	Closing Protection Letters	October 20, 2022
IGD -- C13	Filing Procedures for Crop-Hail and Crop-Hail Production Plan Rating Systems	October 20, 2022
<b>D - Market</b>		

# Reporting to NDOI

“Every insurance company, agent, solicitor, or broker, and every person or party **having knowledge of violation of any of the provisions of this chapter**, is required to promptly report the facts and circumstances pertaining thereto to the Department of Insurance, which report and the name of the **informant may be held confidential** by the department, its officers, assistants and employees, and **not be made public.**”

**-Neb. Rev. Stat. §44-393**

# Civil Liability Immunity- Protecting Yourself and Your Company

“Any person acting **without malice, fraudulent intent, or bad faith** shall be immune from any civil liability by virtue of filing reports or furnishing other information required by Chapter 44 or required by the Director of Insurance under the authority granted in Chapter 44.”

## -Neb. Rev. Stat. §44-3,133

“No cause of action shall arise, nor shall any liability be imposed against any person, for the act of communicating or delivering information or data to the director or his or her authorized representative or examiner pursuant to an examination made under the Insurers Examination Act if such **act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive.**”

## -Neb. Rev. Stat. §44-5909(2)



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# Failure to Report/Reporting with Malice

“An insurer or authorized representative of the insurer that fails to report as required under this section, or that is found to have reported with **actual malice** by a court of competent jurisdiction, may, after notice and hearing, have its license or certificate of authority suspended or revoked and may be fined in accordance with section 44-1529.”

“An insurance producer that fails to report as required by this section, or that is found to have reported with **actual malice** by a court of competent jurisdiction, may, after notice and hearing, have its license suspended or revoked, or may be subject to an administrative fine in accordance with section 44-4059.”

**-Neb. Rev. Stat. §44-4062**

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# False Reporting Penalty

“Any officer, director, or employee of an insurance holding company system who willfully and knowingly subscribes to or makes or causes to be made any false statements, false reports, or false filings with the intent to deceive the director in the performance of his or her duties under the Insurance Holding Company System Act shall be guilty of a Class IV felony.”

**-Neb. Rev. Stat. §44-2147**



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# Reporting to NDOI

(1) Termination of an insurance business relationship with an insurance producer shall notify the director within thirty days following the effective date of the termination, **if the reason for termination is one of the reasons set forth in section 44-4059** or the insurer has knowledge the producer was found by a court, government body, or self-regulatory organization authorized by law to have engaged in any of the activities in such section.

(2) An insurer or authorized representative of the insurer that terminates the appointment, employment, or contract with an insurance producer for any reason not set forth in section 44-4059, shall notify the director within thirty days following the effective date of the termination.

(3) If an insurance producer terminates an insurance business relationship with an insurer while the **insurer has knowledge that the insurance producer has engaged in any of the activities set forth in section 44-4059**, the insurer or authorized representative shall notify the director of such activities within thirty days following the effective date of the termination. If an insurance producer terminates an insurance business relationship with an insurer and the insurer has knowledge that the insurance producer was found by a court, government body, or self-regulatory organization to have engaged in any of the activities set forth in section 44-4059, the insurer or authorized representative shall notify the director within thirty days following the effective date of the termination.

**-Neb. Rev. Stat. §44-4062**

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# Reporting to NDOI

The insurer or the authorized representative of the insurer shall promptly notify the director if, upon further review or investigation, the insurer discovers additional information that would have been reportable to the director in accordance with subsection (1) or (2) of this section had the insurer then known of its existence.

## -Neb. Rev. Stat. §44-4062(4)

The NDOI suggests that these reports should be made as soon as practically possible.

If you suspect that a producer working for or on behalf of your company has engaged in conduct that would violate Neb. Rev. Stat. §44-4059, or any part of Chapter 44, it is better to err on the side of reporting.

# Additional Requirements

Within fifteen days after making the notification the insurer shall mail a copy of the notification to the producer's last-known address.

If the notification to the DOI involves knowledge of violations of Nebraska law, this mailing must be by:

1. Certified mail, return receipt requested, postage prepaid, or
2. Overnight delivery using a nationally recognized carrier

These requirements can be found in [Neb. Rev. Stat. §44-4062\(6\)](#).



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# Grounds for Administrative Action (44-4059)

- (a) Providing incorrect, misleading, incomplete, or materially untrue information in the license application;
- (b) Violating any insurance law or violating any rule, regulation, subpoena, or order of the director or of another state's insurance commissioner or director;
- (c) Obtaining or attempting to obtain a license through misrepresentation or fraud;
- (d) Improperly withholding, misappropriating, or converting any money or property received in the course of doing insurance business;
- (e) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;
- (f) Having been convicted of a felony or a Class I, II, or III misdemeanor;
- (g) Having admitted or been found to have committed any insurance unfair trade practice, any unfair claims settlement practice, or fraud;
- (h) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere;
- (i) Having an insurance producer license, or its equivalent, denied, suspended, placed on probation, or revoked in Nebraska or in any other state, province, district, or territory;
- (j) Forging another's name to an application for insurance or to any document related to an insurance transaction;
- (k) Improperly using notes or any other reference material to complete an examination for an insurance license;
- (l) Knowingly accepting insurance business from an individual who is not licensed;
- (m) Failing to comply with an administrative or court order imposing a child support obligation pursuant to the License Suspension Act;
- (n) Failing to pay state income tax or comply with any administrative or court order directing payment of state income tax; and
- (o) Failing to maintain in good standing a resident license in the insurance producer's home state.

**-Neb. Rev. Stat. §44-4059**



# Termination

For Cause?

Yes

No

Report to DOI

Knowledge of 4059 Violation?

\*At time of termination

Yes

No

Yes

No

Knowledge of violation gained after termination date?

No Report Needed

Copy to Producer



**So you submitted a report of violation...  
Now what?**



# Initial Department Contacts



# Insurance Complaint Division (ICD)

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DEPARTMENT OF INSURANCE



June 29, 2023

Contact Name  
ABC Insurance Company  
123 Main St  
Springfield, USA 54321

RE: Department Tracking ID: 12345  
Complainant: Jane Doe  
Policy #: XYZ314159  
Claim #: 8675309

Enclosed is a case regarding your company. Please provide all the information requested by the examiner and number your responses to match the items listed. This information is necessary to conduct a thorough review of the company's handling on a timely basis. Any questions, please contact the Examiner directly.

- Company name and NAIC company code
- Policy type and Policy number
- Claim number and status of claim
- Detailed explanation of handling and timeline of events
- Adjuster's name and adjuster's log & notes, including electronic & paper entries
- Copy of policy, schedule, riders/endorsement with applicable policy provisions marked, and dec pages
- Dates and details of contact with complainant
- Copy of all correspondence sent to complainant regarding claim
- Effective and paid-to-dates
- Date and to whom policy mailed
- Reason for delay
- Police report
- Basis of cancellation/nonrenewal
- Copy of cancellation/nonrenewal including proof of mailing
- Copy of application
- Copy of rate filing with actuarial memorandum, or SERFF tracking number
- Explanation of premium calculation
- Explanation of premium return calculation
- Itemization of claims received and/or paid/denied
- Denial reasoning, including applicable policy language. What specific provision are you relying on to deny the claim?
- Medical information
- Evidence to support compliance with Title 210 NAC Ch. 60
- Policy Status

Eric Dunning, Director

Department of Insurance

1526 K Sulte 200

PO Box 95087

Lincoln, Nebraska 68509-5087

office 402-471-2203 fax 402-471-4610

[www.doi.nebraska.gov](http://www.doi.nebraska.gov)

- Producer's name and NPN license number
- Producer's statement
- Settlement offer explanation
- Transcript of recorded statements from all parties involved, including witnesses
- Underwriting guidelines
- Send a copy of your cover letter directly to the complainant if there is a favorable resolution

In addition, please provide any other information that would assist in my review. Copies of your cover letter, and information that is not confidential or proprietary, will be shared with the complainant. Confidential information should be clearly marked.

Thank you for your prompt attention to this matter. Failure to respond within 15 working days may be considered a violation of the Nebraska Unfair Trade Practices Act.

Sincerely,

John Marinovich  
Insurance Complaint Examiner  
Insurance Complaint Division  
[john.marinovich@nebraska.gov](mailto:john.marinovich@nebraska.gov)

Enc.

Eric Dunning, Director

Department of Insurance

1526 K Sulte 200

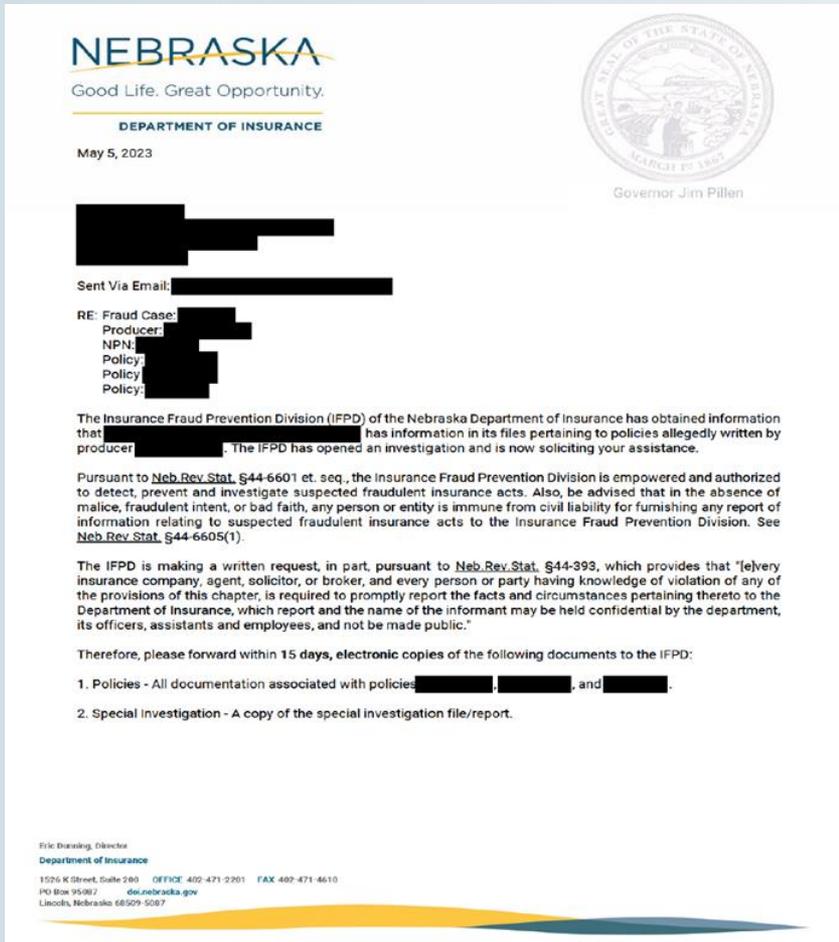
PO Box 95087

Lincoln, Nebraska 68509-5087

office 402-471-2203 fax 402-471-4610

[www.doi.nebraska.gov](http://www.doi.nebraska.gov)

# Insurance Fraud Prevention Division (IFPD)



Regardless of which division contacts you, remember:

- Include the entire investigation file
- Be careful with redactions
- Include other documents as requested, OR a statement stating the grounds on which a document cannot be provided.
- Be mindful of deadlines.
  - Normal timeframe is 15 days
  - Request additional time if necessary.

# Vicious A'Count'ing: The Tale of Dr. Dracula

## Facts of the case:

- Transylvania TriStar Insurance Company has a current appointment with Dracula, an insurance producer.
- TriStar has received numerous complaints concerning bank drafts that were not associated with policies in the account-holder's names, and it was discovered that Dracula was the agent on all of them.
- An internal investigation reveals that Dracula stole personal data from customers and used that information to issue policies in their names, without their knowledge.
- What's worse? The policies sold by Dracula included a rider for "unlimited blood draws" for which the repository for said draws was listed as "Dr. Vlad III"
- Any other concerns anyone notices?

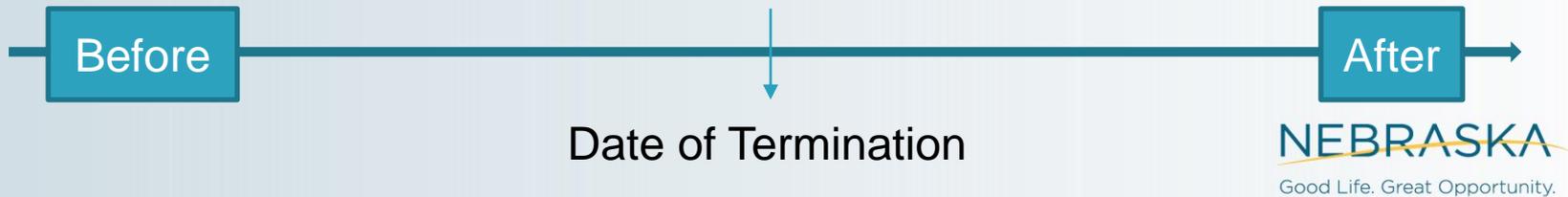


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# Dr. Dracula, 'Count'inued

- As a result of his conduct, TriStar has decided to terminate Dr. Dracula, but what does the DOI need??
- First, ask yourself, is this termination For Cause/Not For Cause?
- What does the DOI want from the company? Methodology and conclusions
- Common Terms that probably mean the DOI will need more:
  - “Executive Summary”
  - “Dismissal Decision”
  - “ongoing investigation as to other potential violations” [**Meaning what you have isn't the entire investigation report!**]
  - “no findings made on”



# Unfair Insurance Trade Practices Act

It shall be an unfair trade practice in the business of insurance for any insurer to commit any act or practice defined in section 44-1525 if the act or practice (1) is committed flagrantly and in conscious disregard of the Unfair Insurance Trade Practices Act or any rule or regulation adopted pursuant to the act or (2) has been committed with such frequency as to indicate a general business practice to engage in that type of conduct.

**-Neb. Rev. Stat. §44-1524**



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# Enumerated Unfair Trade Practices

## -Neb. Rev. Stat. §44-1525

Any of the following acts or practices, if committed in violation of section 44-1524, shall be unfair trade practices in the business of insurance:

- (1) Making, issuing, circulating, or causing to be made, issued, or circulated any estimate, illustration, circular, statement, sales presentation, omission, or comparison which:
  - (a) Misrepresents the benefits, advantages, conditions, or terms of any policy;
  - (b) Misrepresents the dividends or share of the surplus to be received on any policy;
  - (c) Makes any false or misleading statements as to the dividends or share of surplus previously paid on any policy;
  - (d) Misleads as to or misrepresents the financial condition of any insurer or the legal reserve system upon which any life insurer operates;
  - (e) Uses any name or title of any policy or class of policies which misrepresents the true nature thereof;
  - (f) Misrepresents for the purpose of inducing or tending to induce the purchase, lapse, forfeiture, exchange, conversion, or surrender of any policy, including intentionally misquoting any premium rate;
  - (g) Misrepresents for the purpose of effecting a pledge or assignment of or effecting a loan against any policy; or
  - (h) Misrepresents any policy as being shares of stock;
- (2) Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of insurance or with respect to any insurer in the conduct of his or her insurance business which is untrue, deceptive, or misleading;
- (3) Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting, or encouraging the making, publishing, disseminating, or circulating of any oral or written statement or any pamphlet, circular, article, or literature which is false or maliciously critical of or derogatory to the financial condition of any insurer and which is calculated to injure such insurer;
- (4) Entering into any agreement to commit or by any concerted action committing any act of boycott, coercion, or intimidation resulting in or tending to result in unreasonable restraint of or monopoly in the business of insurance;

- (5)(a) Knowingly filing with any supervisory or other public official, or knowingly making, publishing, disseminating, circulating, or delivering to any person, or placing before the public, or knowingly causing, directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false material statement of fact as to the financial condition of an insurer; or
- (b) Knowingly making any false entry of a material fact in any book, report, or statement of any insurer or knowingly omitting to make a true entry of any material fact pertaining to the business of such insurer in any book, report, or statement of such insurer;
- (6) Issuing or delivering or permitting agents, officers, or employees to issue or deliver agency company stock or other capital stock, or benefit certificates or shares in any common-law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance;
- (7)(a) Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any life insurance policy or annuity or in the dividends or other benefits payable thereon or in any other of the terms and conditions of such policy or annuity;
- (b) Making or permitting any unfair discrimination between individuals of the same class involving essentially the same hazards in the amount of premium, policy fees, or rates charged for any sickness and accident insurance policy or in the benefits payable thereunder, in any of the terms or conditions of such policy, or in any other manner, except that this subdivision shall not limit the negotiation of preferred provider policies and contracts under sections 44-4101 to 44-4113;
- (c) Making or permitting any unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to issue, refusing to renew, canceling, or limiting the amount of insurance coverage on a property or casualty risk because of the geographic location of the risk unless:
- (i) The refusal, cancellation, or limitation is for a business purpose which is not a pretext for unfair discrimination; or
- (ii) The refusal, cancellation, or limitation is required by law, rule, or regulation;
- (d) Making or permitting any unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to issue, refusing to renew, canceling, or limiting the amount of insurance coverage on a residential property risk, or the personal property contained therein, because of the age of the residential property unless:
- (i) The refusal, cancellation, or limitation is for a business purpose which is not a pretext for unfair discrimination; or
- (ii) The refusal, cancellation, or limitation is required by law, rule, or regulation;
- (e) Refusing to insure, refusing to continue to insure, or limiting the amount of coverage available to an individual solely because of the sex or marital status of the individual. This subdivision shall not prohibit an insurer from taking marital status into account for the purpose of defining individuals eligible for dependent benefits; or
- (f) Terminating or modifying coverage or refusing to issue or refusing to renew any property or casualty insurance policy solely because the applicant or insured or any employee of the applicant or insured is mentally or physically impaired unless:
- (i) The termination, modification, or refusal is for a business purpose which is not a pretext for unfair discrimination; or

(ii) The termination, modification, or refusal is required by law, rule, or regulation.

This subdivision (f) shall not apply to any sickness and accident insurance policy sold by a casualty insurer and shall not be interpreted to modify any other provision of law relating to the termination, modification, issuance, or renewal of any policy;

(8)(a) Except as otherwise expressly provided by law:

(i) Knowingly permitting or offering to make or making any life insurance policy, annuity, or sickness and accident insurance policy, or agreement as to any such policy or annuity, other than as plainly expressed in the policy or annuity issued thereon, or paying, allowing, or giving, or offering to pay, allow, or give, directly or indirectly, as inducement to such policy or annuity, any rebate of premiums payable on the policy or annuity, or any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the policy or annuity; or

(ii) Giving, selling, purchasing, or offering to give, sell, or purchase as inducement to such policy or annuity or in connection therewith any stocks, bonds, or other securities of any insurer or other corporation, association, partnership, or limited liability company, or any dividends or profits accrued thereon, or anything of value not specified in the policy or annuity.

(b) Nothing in subdivision (7) or (8)(a) of this section shall be construed as including within the definition of discrimination or rebates any of the following acts or practices:

(i) In the case of any life insurance policy or annuity, paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance if such bonuses or abatement of premiums are fair and equitable to policyholders and for the best interests of the insurer and its policyholders;

(ii) In the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expenses; or

(iii) Readjustment of the rate of premium for a group insurance policy based on the loss or expense thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for such policy year;

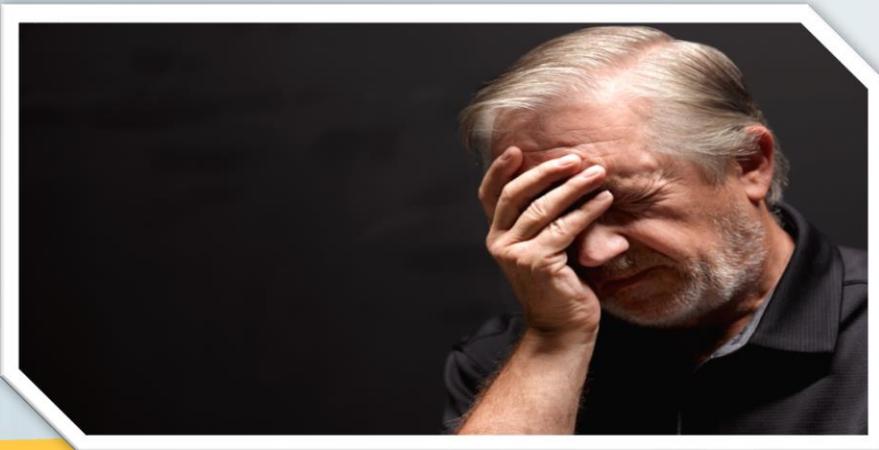
(9) Failing of any insurer to maintain a complete record of all the complaints received since the date of its last examination conducted pursuant to the Insurers Examination Act. This record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of each complaint, and the time it took to process each complaint. For purposes of this subdivision, complaint shall mean any written communication primarily expressing a grievance;

(10) Making false or fraudulent statements or representations on or relative to an application for a policy for the purpose of obtaining a fee, commission, money, or other benefit from any insurer, agent, broker, or individual person;

(11) Failing of any insurer, upon receipt of a written inquiry from the department, to respond to such inquiry or request additional reasonable time to respond within fifteen working days;

(12) Accepting applications for or writing any policy of insurance sold, negotiated, or solicited by an insurance producer or business entity not licensed or appointed as required by the Insurance Producers Licensing Act; and

(13) Violating any provision of section 44-320, 44-348, 44-360, 44-361, 44-369, 44-393, 44-515 to 44-518, 44-522, 44-523, 44-7,101, 44-2132 to 44-2134, 44-3606, 44-4809, 44-4812, 44-4817, or 44-5266, the Privacy of Insurance Consumer Information Act, or the Unfair Discrimination Against Subjects of Abuse in Insurance Act.



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# OR...

- Use of An Unlicensed Agent/Agency
- Actions on Professional Licenses
- Undisclosed Criminal History/Recent Criminal Proceedings
- Misleading Advertising/Marketing/Solicitation
- Referral Fees/Rebating/Inducements
- Intentional Misrepresentation of a Policy/Product
- Forgery/Submission of Fraudulent Applications
- Beneficiary Violations
- Churning
- Misappropriation of Premiums/Unauthorized Loans
- Fraudulent Investment Schemes



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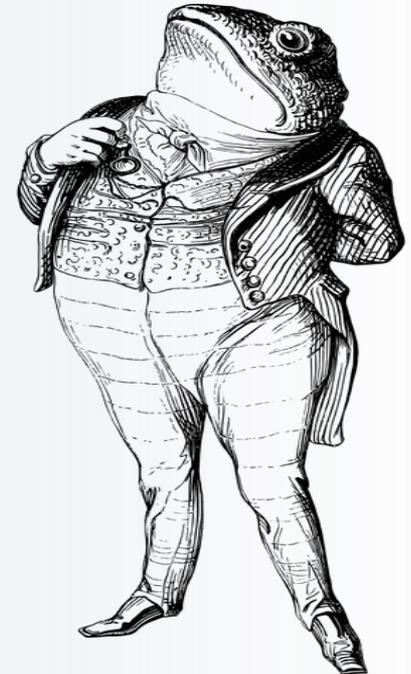
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# Mr. Gillman's No-Good, Very Bad Business Practices.

Some time ago, TriStar Insurance Company appointed Mr. Gillman to sell its insurance products. Mr. Gillman, while adequate as a producer, has never performed well in internal promotions/competitions, and has always been a middle-of-the-pack producer.

Suddenly, Mr. Gillman's performance skyrockets, which caught the attention of his manager, who would like to undertake an investigation of sorts, ensuring that no Lily-pad remain unturned.

What information might you look to when reviewing Mr. Gillman's book of business?



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# Mr. Gillman

- Training Materials
- Applications
  - Contact/Banking Information
  - Signatures/E-Signatures
  - Meta-Data (i.e. Location Data)
- Complaints
  - Don't forget to reach out to the complainant!
- History of Cancelled Policies
- Repeat Customers (i.e. Conflicting Policies)
- Retention Standards/Record-Keeping
- Electronic Systems
- Phone Calls/Recordings
- Policy Documents



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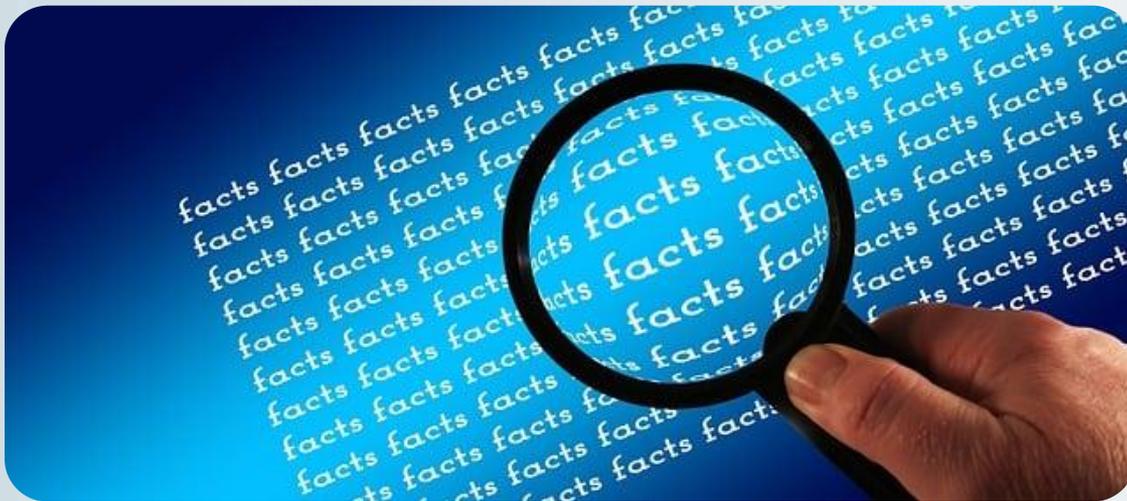
# EXAMINATIONS



# Examination

“The Department of Insurance and its employees shall have the right at any time to inspect any policy covering any risk in this state. Every policyholder shall procure and exhibit any policy in his possession or control when required for the inspection of the department or its assistants or employees.”

-Neb. Rev. Stat. §44-353



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# Examination Authority

“The director may examine and investigate the affairs of every insurer doing business in this state in order to determine whether such insurer has been or is engaged in any unfair trade practice defined in section 44-1524. An insurer other than an agent, broker, or insurance consultant shall reimburse the department for the expense of examination in the same manner as provided for examination of insurance companies in the Insurers Examination Act.”

-Neb. Rev. Stat. §44-1527

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# Responsibility for TPA/Agent Actions

“It shall be the sole responsibility of the insurer to provide for competent administration of its programs.”

“In cases when a third-party administrator administers benefits for more than one hundred certificate holders or subscribers on behalf of an insurer, the insurer shall, at least semiannually, conduct a review of the operations of the third-party administrator. At least one such review shall be an onsite audit of the operations of the third-party administrator.” -Neb. Rev. Stat. §44-5807

NOTE for **Title Insurers: Requirements for Title Insurers to Review Insurance Agents working for them-**

» LB 92/“AM84”: **passed this year (2023)**

»removes the words “on-site” from §44-1993(3), the **Title Insurer’s Act**

»now, **remote** audits of title ins agent = compliance with law

# Market Conduct Examinations

- How Can You File/Save Business Records for required responses to your DOI?
- **WAIT – REQUIRED?**
  - **Neb. Rev. Stat. §44-5905(B)** (“[e]very company or person subject to the act shall retain market conduct records for **five years** following the completion of a transaction relating to the insurance business and affairs of such company or person”)
  - **What Counts as “market conduct records”?**
    - “...all books, records, accounts, papers, documents, and computer or other recordings related to:”
      - (A) Transactions with insureds, certificate holders, claimants, insurance producers, other insurers, subrogees and subrogors, and
      - (B) records relating to co.’s trade practices, underwriting, rate and form practices, advertising, regulatory matters, and other affairs of the company or producer [person]

# WolfeTech, Inc./Matthew Wolfe

CEO of WolfeTech, Inc. has recently expanded into the world of insurance; specifically, the “**life and health**” line.

Seems like a lot of joggers and people out at night have been injured or killed around the full moon in TriStar City since WolfeTech, along with its enigmatic CEO, moved to town....

WolfeTech has been established for several years and effectively captured a significant market share in the area’s insurance industry during that time.

Recently, TriStar City’s DOI market examiners have started to see a trend of WolfeTech refusing more claims per month as compared to the last year and the number of complaints the DOI has received about WolfeTech has also risen.

After commencing a market conduct exam on WolfeTech, all TriStar DOI examiners were given permission to request any records that the Department deems necessary from the company.

Where do you start? What specific records do you need to submit?

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# WolfeTech, Inc./Matthew Wolfe

- **Sources of Authority**
  - Examination Authority
  - Statutes
  - Regulations
  - Guidance Documents
- **Scope of Investigation**
  - Wide/Narrow? Why?
- **What documents do you look at?**
  - From WolfeTech, Inc.'s TPAs
  - Any internal documents?
- **Any related parties that need identified?**



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# RECORD RETENTION



# General Record Retention; or “It’s Not Hoarding if It’s Required By Law”

(1): Why do my records [of business/policies/claims/etc] matter?

– DOI has authority to **conduct examinations of insurer’s records**

- “**Examinations**” = deep dive into company’s records of business, policies sold, claims filed, etc., by examiners appointed by Director (see §44-5905(1))

(2) Duties of Insurer under examination (§44-5905(2)(a)):

–**Timely, convenient and free access for examiners** to records, docs, books, etc. relating to insurer’s **property, assets, business and/or affairs**

–**What Records are Insurers Required to Retain (And How Long)?:**

»\_“all books, records, accounts, papers, documents, and computer and other recordings” relating to ↑ [same as paragraph above], for **5 years**, OR until **transactions recorded** have been through a financial examination of company (see ↑) **AND**

»Market Conduct records must be retained by insurer **for 5 years after exam**

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# Specialized Rules: Digitized Record Formats & the Wild World of Title Insurance

## (1) Digitized Record Formats:

More records in the insurance industry are being digitized, or are entirely electronic, so KEEP IN MIND:

- **§44-5905 (2)(b)(ii): records/docs** “described in subdivisions (2)(b)(i)(A) and (B) of this section and maintained in electronic, mimographic, or other form shall be maintained in a form capable of accurate duplication on paper.”

## (2) Title Insurance: Special Records Retention Req’s

§44-19,100: **title insurers must retain evidence of:**

(a) records of agency’s examination of title and determination of insurability for title ins business (for min of 15 years);  
**and**

(b) records relating to escrow and security deposits for ten (10) years after account closing

# Records of Cancellations of Policies; or – **“Wait, Wait, Don’t Shred That!!”**

- **Question: how long does a producer/agent have to send notice of cancellation to the carrier/insurer?**
  - **“Correct” answer:** each agent/producer should see terms of their Appointment Contract with insurer – should set min req’s
  - **BETTER answer:** send in cancellation notices ASAP!
    - **WHY?**
      - *Kent v. Dairyland Mut. Ins. Co.*, decided by NE Supreme Court in 1964 (and never overturned): a producer has a duty to the policyholder to “in all transactions concerning or affecting the subject matter of the agency, to act with the utmost good faith and loyalty to further the principles interest.” **AND:**
      - The *Kent* case established 2 ways of finding “**date**” request for cancellation was made: A) written req to cancel with date OR B) PH req’s cancellation, no specified date
        - » If no date specified, court looks @ **date producer received cancellation request** as effective date of cancellation

# Frankenstein's Monster Gets a Job; or... “Working's A Real Pain in the Neck”

## FACTS:

»Frankenstein's monster was created in a lab from unholy science, but you try telling that the Unemployment Office.

- So, abandoned by his Maker (“Dr.” Frankenstein), and forced into the ‘real world,’ “the Monster” decides to become an insurance agent, specializing in the Property and Casualty line. He also changes his name to “Mr. Monstair,” tells his interviewer at an insurance company it's French and gets the job!

»Frankenstein's monster is enjoying working as a producer in a small insurance agency, until one day a letter from the Dept of Insurance arrives, -

- Letter says DOI examiners arriving with two weeks to examine insurance agency's records

- Mr. Monstair has a system, but.... hasn't been following it. Some important docs might be missing... and

- Now that he thinks of it, Mr. Monstair might have left records with client's private info at a restaurant at lunch

Last week...that's probably fine...he got them back...  
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# Records Retention, Client Confidentiality, & the ‘Monstrous’ Consequences of Non-Compliance

- Potential issues for Mr. Monstair when the DOI examiners get there?
  - Insurer **and** producer’s goal is to protect client information:
    - 1<sup>st</sup> Issue: not maintaining confidentiality of client info [leaving it on a restaurant table/in a public place  
and
    - 2<sup>nd</sup> Issue: Losing/misfiling records of business:
      - A **producer’s** failure to retain records can affect their employer’s [agency] insurance license as well as the producer’s own insurance license





# Note on Confidentiality

“Any documents, materials, or other information in the control or possession of the director furnished by an insurer, insurance producer, or employee or agent acting on behalf of the insurer or producer, or obtained by the director in an investigation pursuant to this section shall be confidential and privileged. Such documents, materials, or other information shall not be public records...”

**-Neb. Rev. Stat. §44-4062**

# Permissible Use of Documents by DOI

The documents submitted to the NDOI may be shared under certain circumstances with other regulatory and law enforcement agencies, the International Association of Insurance Supervisors, the National Association of Insurance Commissioners, etc.

In these situations, the receiving party must enter into a confidentiality agreement with the NDOI consistent with the provisions of Neb. Rev. Stat. §44-154.

“Nothing in this section shall constitute a waiver of any applicable privilege or claim of confidentiality in the documents... as a result of disclosure to the director or as a result of information sharing authorized by this section.”

**Neb. Rev. Stat. §44-154 (4)**

# What Steps Can You Take to Protect Confidential Information?

Remember: Records submitted to the NDOI under Chapter 44 can be protected as long as they fit squarely into either the exemptions found in Neb. Rev. Stat. §84-712.05, or the exemption outlined in Neb. Rev. Stat. §44-4062.

This includes records containing information such as:

- Medical Records
  - Protected Health Information
  - Personal Identifiable Information
- Trade Secrets
- Records received for investigatory purposes

# NSA Enforcement

- Nebraska is a party to a Collaborative Enforcement Agreement with CMS to enforce certain provisions of the No Surprises Act (“NSA”).
- Under this agreement, the NDOI will begin sending contact letters to insurers when the Department is made aware of potential balance billing in violation of the NSA.
- These letters are sent with a request for documents, which will allow the NDOI to investigate and make a determination as to whether the conduct violates the NSA.
- If the matter cannot be settled between the NDOI and the insurer, the matter will be forwarded to CMS for potential action as CMS sees fit.

**-Title XXVII of the Public Health Service Act**

# Q & A

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DEPARTMENT OF INSURANCE



# Stay in Touch

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- Follow the Nebraska Department of Insurance on LinkedIn to stay up-to-date on future CLEs and events hosted by the department.
- Insurtech on the Silicon Prairie will be hosted on Oct 24 with a networking event on Oct. 23 at Kaneko in Omaha's Old Market District. To learn more about the conference, visit [siliconprairienebraska.com](http://siliconprairienebraska.com) and follow Insurtech on the Silicon Prairie on LinkedIn.

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# Satisfaction Survey



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