

No. 2018 - 5778

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

Date: DEC 14 2018

Subject Considered:

Texas Department of Insurance

v.

Protector Insurance, LLC;
Denice Lizeth Rodriguez; and
Marissa Barrientos

SOAH Docket No. 454-18-0998.C

General remarks and official action taken:

The subject of this order is the disciplinary action against Protector Insurance, LLC; Denice Lizeth Rodriguez; and Marissa Barrientos (respondents).

Background

The Texas Department of Insurance (TDI) brought disciplinary action against respondents based on allegations that respondents violated the Texas Insurance Code by engaging in fraudulent or dishonest acts or practices.

A hearing in this case was held before Catherine Egan, administrative law judge (ALJ) for the State Office of Administrative Hearings. ALJ Egan signed a proposal for decision containing her recommendation and underlying rationale and including separately stated findings of fact and conclusions of law. A copy of the proposal for decision is attached as Exhibit A.

Respondents filed exceptions to ALJ Egan's proposal for decision. TDI filed a response to the exceptions.

2018- 5778

COMMISSIONER'S ORDER

TDI v. Protector Insurance, LLC; Denice Lizeth Rodriguez; and Marissa Barrientos

SOAH Docket No. 454-18-0998.C

Page 2 of 2

In response to the filed exceptions, ALJ Egan did not recommend revising the findings of fact or conclusions of law contained in her proposal for decision. A copy of ALJ Egan's response to exceptions is attached as Exhibit B.

Findings of Fact

The findings of fact contained in Exhibit A are adopted by TDI and incorporated by reference into this order.

Conclusions of Law

The conclusions of law contained in Exhibit A are adopted by TDI and incorporated by reference into this order.

Order

It is ordered that:

- a. The limited lines agent license held by Denice Lizeth Rodriguez is revoked;
- b. The limited lines agent license held by Marissa Barrientos is revoked; and
- c. The limited lines agency license held by Protector Insurance, LLC is revoked.

A copy of this order will be provided to law enforcement and other appropriate administrative agencies for further investigation as may be warranted.



Kent C. Sullivan
Commissioner of Insurance

2018- 5778

State Office of Administrative Hearings



Lesli G. Ginn
Chief Administrative Law Judge

August 27, 2018

Kent Sullivan
Commissioner of Insurance
Texas Department of Insurance
333 Guadalupe, Tower 1
13th Floor-MC 113-2A
Austin, TX 78714

VIA INTERAGENCY

RE: Docket No. 454-18-0998.C; Texas Department of Insurance v. Protector Insurance, LLC, Denice Lizeth Rodriguez & Marissa Barrientos

Dear Commissioner Sullivan:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 Tex. Admin. Code § 155.507(c), a SOAH rule which may be found at www.soah.texas.gov.

Sincerely,

A handwritten signature in black ink that reads "Catherine C. Egan".

Catherine C. Egan
Administrative Law Judge

CE/tt

Enclosure includes 1 CD; Certified Evidentiary Record

cc: TDI Cassie Tigue, Staff Attorney, Texas Department of Insurance, Enforcement Section, MC 110-1A, P.O. Box 149104, Austin, TX 78714- **VIA INTER-AGENCY**
Hector DeLeon & Athena Ponce, 901 S. Mopac Expwy., Barton Oaks Plaza, Building 5, Suite 230, Austin, TX 78746 - **VIA REGULAR MAIL**

2018- 5778

SOAH DOCKET NO. 454-18-0998.C
TDI CASE NOS. 9964, 13381, & 13382

TEXAS DEPARTMENT OF INSURANCE,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
v.	§	
	§	OF
PROTECTOR INSURANCE, LLC,	§	
DENICE LIZETH RODRIGUEZ, and	§	
MARISSA BARRIENTOS,	§	
Respondents	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff (Staff) of the Texas Department of Insurance (the Department) brought this disciplinary action against Protector Insurance, LLC (Protector), Denice Lizeth Rodriguez, and Marissa Barrientos (collectively Respondents). Staff alleges that Respondents violated the Texas Insurance Code (Code) by engaging in fraudulent or dishonest acts or practices and seeks to revoke Respondents’ Department-issued licenses. The Administrative Law Judge (ALJ) finds that Staff proved the alleged violations and recommends that Respondents’ Department-issued licenses be revoked.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

There are no disputed issues of notice or jurisdiction in this case. Therefore, those matters are addressed in the findings of fact and conclusions of law without further discussion here.

The hearing on the merits was held on April 9-10, 2018, before ALJ Catherine Egan at the State Office of Administrative Hearings (SOAH) facilities at 300 West 15th Street, Austin, Texas. Staff attorneys Cassie Tigie and Casey Seeboth represented Staff. Attorneys Hector De Leon and Athena Ponce represented Respondents. The record closed on June 28, 2018, after the parties filed written closing arguments.

On March 28, 2018, Staff timely filed a Motion to Present Testimony of Witnesses by Telephone (the motion). The witnesses identified in the motion included John Finucane,

underwriting manager at American Access Casualty Company (American Access); Sharon Mason, an employee with Mendota Insurance Company (Mendota); and Maria Cortez, Chief Operations Officer (COO) with Empower Managing General Agency (Empower). Pursuant to 1 Texas Administrative Code § 155.405, an unopposed motion is granted without the necessity of an order, unless denied by order. Respondents filed no opposition to the motion so the motion was granted. Although Respondents did not oppose the motion, they noted in the Certificate of Conference they were “reserving all objections to the testimony until time of hearing.”¹

The day before the hearing on the merits, Respondents filed Respondents’ Objection and Motion to Exclude the Texas Department of Insurance’s Improperly Noticed or Predicated Evidence (Respondents’ Objection). Respondents noted that on January 22, 2018, Staff filed its Supplemental Responses to Respondents’ Request for Disclosure but did not disclose any expert witnesses. Staff identified COO Cortez and Ms. Mason as persons with knowledge of relevant facts, but neither was disclosed as a fact or expert witness, and Mr. Finucane was not identified at all. As a preliminary matter, Respondents urged Respondents’ Objection and argued that Staff should not be able to call Mr. Finucane at all and COO Cortez and Ms. Mason should not be permitted to provide expert opinions or testify to anything outside the witnesses’ personal knowledge. Respondents further asserted that “we need time to depose or ask questions of them, or get more information from them, as to their competency or what they know . . .”²

Staff argued that it timely designated the three businesses in Staff’s response to Respondents’ disclosure request filed in December 2017. These three businesses identified these three witnesses as their representatives. Despite knowing that the three businesses had knowledge of relevant facts, Staff stated, Respondents conducted no discovery about who would be the representatives for these businesses. Staff reported that American Access did not identify whom it would designate to testify until March 2018, when Staff subpoenaed American Access to appear in this proceeding.³

¹ Staff’s Motion to Present Testimony of Witnesses by Telephone at 3.

² Transcript of Hearing on the Merits (Tr.) Vol. 1 at 21.

³ Tr. Vol. 1 at 24-25.

After hearing the arguments of both parties, the ALJ agreed to continue the hearing on the merits to afford Respondents time to depose these witnesses. Respondents instead elected to proceed with the hearing on the merits as scheduled, and continued to assert the objections overruled by the ALJ.⁴

II. PARTIES' POSITIONS AND APPLICABLE LAW

A. Parties' Positions

1. Staff's Position

Staff alleges that Respondents engaged in fraudulent and dishonest practices by submitting to insurance carriers (insurers) fictitious proofs of prior coverage with automobile insurance applications in order to obtain a discounted or reduced premium for 23 applicants. According to Staff, Respondents did so knowing that the insurers relied on this information for the purpose of underwriting the applications for automobile insurance at a reduced or discounted rate. Therefore, Staff asserts, Respondents' licenses should be revoked for engaging in fraudulent or dishonest acts or practices in violation of Code § 4005.101(b)(5); and for violating or failing to comply with the Code or a rule of the Commissioner, pursuant to Code § 82.051.

2. Respondents' Position

Respondents admitted they falsified proofs of prior coverage submitted with the 23 applications in issue. Respondents argued they did so for altruistic reasons, not only for financial gain. According to Respondents, they falsified the proof of prior coverage to "benefit a rather marginalized segment of our society down in the valley."⁵ Respondents further argued that by submitting this fictitious documentation they helped the insurer receive premium dollars they otherwise would not have received.⁶ Respondents reasoned that "[r]ather than being damaged, the insurance companies [insurers] actually benefitted because they actually got

⁴ Tr. Vol. 1 at 28-29.

⁵ Tr. Vol. 2 at 47.

⁶ Tr. Vol. 1 at 44.

premium dollars that they would not otherwise have. So, they weren't cheated, they were benefitted."⁷

Relying in part on four prior Consent Orders issued by the Commissioner against other unrelated agents, Respondents submit that the Department is limited to imposing no more than a \$5,000 administrative penalty against Respondents for their violations of the Code. Respondents pointed out that they voluntarily stopped submitting fictitious proofs of prior coverage to insurers in April 2017, when the Department began its investigation. Since then, they maintained, they have complied with the Code and even hired a consultant to help create a best practice handbook.

B. Applicable Law

The Code authorizes the Department to regulate the business of insurance in this state.⁸ The Department is authorized to take disciplinary action against a license holder under Code § 4005.101(b)(5) if it determines that the license holder engaged in "fraudulent or dishonest acts or practices." According to § 4005.102, the Department may revoke, suspend, or deny renewal of a license, place the license holder on probation if the license holder was suspended, assess an administrative penalty, or issue a reprimand. Code § 82.051 provides that after notice and opportunity for a hearing, the Department Commissioner may cancel or revoke an authorization if the holder of the authorization is found to be in violation of the Code or a Commissioner rule. In Chapter 82 of the Code, the term "authorization" is defined as "a permit, license, certificate of authority, certificate of registration, or other authorization issued or existing under the [C]ommissioner's authority or this code."⁹ Staff bears the burden of proof in this matter.¹⁰

⁷ Tr. Vol. 1 at 44.

⁸ Tex. Ins. Code (Code) § 31.002(1).

⁹ Code § 82.001.

¹⁰ 1 Tex. Admin. Code § 155.427.

III. DISCUSSION OF THE EVIDENCE

A. Stipulations¹¹

The parties submitted 27 stipulations in this matter. The following is a brief summary of the stipulations.

On September 7, 2010, the Department issued a limited lines agent license to Respondent Rodriguez under individual identification number 830671. On January 11, 2011, the Department issued a limited lines agent license to Respondent Barrientos, individual identification number 832938. On June 5, 2013, the Department issued Protector a limited lines agency license under firm identification number 77327. Protector is owned by Respondents Rodriguez and Barrientos. All three licenses were current at the time of the alleged violations.

Respondents admitted that they knowingly created documents for 23 applicants to establish that each had prior coverage despite knowing this was untrue. Respondents submitted the falsified documents to insurers for the purpose of obtaining a reduced or discounted premium for prior insurance coverage. The insurers or their Managing General Agency (MGA) relied on the falsified information Respondents provided to award these 23 applicants reduced or discounted premiums for prior coverage.

The parties stipulated that in April 2017 Respondents discontinued knowingly submitting falsified proof of prior insurance coverage to insurers and the Department has found no evidence to the contrary.¹² The applicants for whom Respondents submitted fraudulent information to insurer are discussed in detail below.

¹¹ The Stipulations were admitted into evidence as Staff Ex. 24.

¹² Staff Ex. 24, Stipulation No. 27.

B. The Applications and Fraudulent Proofs of Prior Insurance**1. Empower Insurance Group**

Maria Cortez has been the COO with Empower since 2004. She explained that Empower is the MGA for Alinsco, an insurer.¹³ As Alinsco's MGA, Empower established the insurance rates, submitted the rates to the Department for approval, evaluated agents for Alinsco to appoint as sales agents, created the underwriting guidelines, and handled and serviced the claims. Once Alinsco appointed a sales agent, Empower managed the independent sales agents, including Protector.¹⁴

Protector was appointed to sell Empower products on September 11, 2012.¹⁵ COO Cortez testified that for each policy Protector sold or renewed, Protector earned a commission. Under Empower's underwriting process, once a sale was made through an independent agent, the underwriting department assessed the risks by reviewing the applicant's driving record and claims history and the discounts the agent applied to the premium.¹⁶ COO Cortez pointed out that an applicant with proof of prior coverage could receive a discount as high as 25 percent.¹⁷

Empower's underwriting guidelines set out the type of proof of prior coverage that independent sales agents could provide for that discount.¹⁸ This documentation included the Declaration Page, Letters of Experience, and Identification Cards (Texas Liability Insurance cards).¹⁹ COO Cortez emphasized that it was Protector's responsibility to provide Empower with this proof because Protector sold the product to the applicant with this discount.²⁰ Empower

¹³ Empower and Alinsco are owned by the Banker Group of Companies. Tr. Vol. 1 at 176.

¹⁴ Tr. Vol. 1 at 175.

¹⁵ Tr. Vol. 1 at 141-42.

¹⁶ Tr. Vol. 1 at 143-44.

¹⁷ Tr. Vol. 1 at 144-45.

¹⁸ Tr. Vol. 1 at 145.

¹⁹ Tr. Vol. 1 at 146.

²⁰ Tr. Vol. 1 at 146.

did not independently verify this information, but relied on Protector to submit accurate information with the policy application.²¹

Respondents stipulated that they knowingly falsified documents to show the following applicants had prior insurance coverage when they did not. Additionally, Respondents admitted that when they submitted the applications to Empower with the fictitious proof of prior coverage, they intended Empower to rely on this documentation to obtain a reduced policy premium for the following applicants:

Applicant	Application Date	Fabricated/Altered Proof of Insurance documents submitted by Respondents
Inocencia Garza	July 20, 2015	Texas Liability Insurance Card allegedly from Lyndon Southern Insurance Company for the periods 7/05/14 thru 1/05/15 and 1/05/15 thru 7/05/15 ²²
Mariana Martinez Perez	July 24, 2015	Texas Liability Insurance Card allegedly from Home State County Mutual Insurance Company (Home State) for the period 1/04/15 thru 7/04/15 ²³
Micaela Mirales	April 15, 2017	Texas Liability Insurance Card allegedly from Home State for the periods 4/10/16 thru 10/10/16 and 10/12/16 thru 4/12/17 ²⁴
Sanjuana Munoz	January 26, 2017	Texas Liability Insurance Card allegedly from Home State for the periods 1/12/16 thru 7/12/16 and 7/12/16 thru 1/12/17 ²⁵
Wilfredo Perez	April 3, 2017	Texas Liability Insurance Card allegedly from Lyndon Southern Insurance Company for the period 7/28/16 thru 1/28/17 ²⁶

COO Cortez testified that Empower received each of these applications with the fraudulent proofs of prior coverage, and relied on this information to give these applicants the

²¹ Tr. Vol. 1 at 147.

²² Staff Ex. 19 at 6013; Staff Ex. 24, Stipulation No. 8.

²³ Staff Ex. 20 at 5996; Staff Ex. 24, Stipulation No. 5.

²⁴ Staff Ex. 21 at 5200; Staff Ex. 24, Stipulation No. 6.

²⁵ Staff Ex. 22 at 5407-08; Staff Ex. 24, Stipulation No. 7.

²⁶ Staff Ex. 23 at 5203; Staff Ex. 24, Stipulation No. 9.

discounted/reduced premium rate for the policy issued.²⁷ COO Cortez stated that Empower paid Protector a commission for these applications.²⁸ In 2016, Empower audited Protector and discovered the fraudulent proofs of prior coverage, reported it to the Department, and disconnected Respondents' access to the Empower system so they could not sell any more new business with Empower.²⁹

During cross-examination, COO Cortez explained that although Empower is the MGA and not the insurer, the premiums are paid to Empower before going to Alinsco. She acknowledged that Empower is also paid a commission, but stated if the premium paid to Alinsco was the wrong amount, "Empower is harmed because they're getting less commission."³⁰

Although Respondents stipulated that they falsified the proofs of prior coverage, when Respondent Barrientos testified, she said it was "possibly" her signature on the application, but she could not remember because it happened so long ago.³¹ She conceded that she knew these 23 applications included documents that were false because she created them or instructed her employee to create them.³² But, she clarified, this was "to give the clients a discount and be able to sell the insurance."³³

2. American Access Casualty Company

John Finucane, the underwriting manager for American Access, explained that he manages a staff of underwriters to ensure American Access' policies and procedures are followed and the work done timely. According to Mr. Finucane, America Access appointed Respondents as third-party agents to sell its insurance. As agents, Respondents were required to

²⁷ Tr. Vol. 1 at 155-65.

²⁸ Tr. Vol. 1 at 165-66.

²⁹ Tr. Vol. 1 at 167-68.

³⁰ Tr. Vol. 1 at 172.

³¹ Tr. Vol. 2 at 210.

³² Tr. Vol. 2 at 214.

³³ Tr. Vol. 2 at 214.

sell insurance for American Access within the guidelines of the producer agreement and in return, Respondents received a commission under the commission agreement.³⁴ He explained that the underwriting manual, referred to as the rate book, was stored in the computer and available to its agents, and had the Department-approved rate tables.³⁵

Mr. Finucane testified that third-party agents knew that American Access offered new customers a discounted premium if they could show that they had uninterrupted insurance coverage with another insurance company—referred to as the prior coverage discount.³⁶ This discount, he explained, could be 15-20 percent of the premium based on the length of time the applicant had uninterrupted prior coverage.³⁷ Evidence of prior insurance coverage, he testified, is typically an Identification Card, a Renewal offer, a Declaration Page (the first page of a policy), or a Letter of Experience.³⁸

The automated front-end underwriting process is, in Mr. Finucane's opinion, the most important part of the application process. He explained third-party agents, including Respondents, asked the customer the questions on the application and populated the answers using a computer.³⁹ It was essential that the answers be truthful and accurate to get the right rate for the risk the insurance company was taking by insuring the applicant.⁴⁰ American Access did not verify the proof of prior coverage submitted by a third-party agent with the application, but instead relied on the agent to secure and submit truthful information.⁴¹

Mr. Finucane testified that for the following applicants, American Access received applications from Respondents with proofs of prior coverage. American Access relied on the proofs of prior coverage submitted by Respondents in giving the following applicants a reduced

³⁴ Tr. Vol. 1 at 54-55.

³⁵ Tr. Vol. 1 at 56.

³⁶ Tr. Vol. 1 at 56-57.

³⁷ Tr. Vol. 1 at 57.

³⁸ Tr. Vol. 1 at 59.

³⁹ Tr. Vol. 1 at 55.

⁴⁰ Tr. Vol. 1 at 56.

⁴¹ Tr. Vol. 1 at 60.

premium rate—a discounted rate. According to Mr. Finucane, American Access was harmed by Respondents' action because the deception resulted in a lower premium being charged. He added that there could have been "additional damages if there were claims associated with these customers whose policies shouldn't have been underwritten in the first place."⁴²

Applicant	Application Date	Fabricated/Altered Proof of Insurance submitted by Respondents
Avigail Martinez	September 9, 2016	Letter of Experience allegedly from Empower for the period 9/11/15 thru 9/11/16 ⁴³
Cinthia Estrada Ruiz	July 19, 2016	Letter of Experience allegedly from Apollo Managing General Agency for the periods 12/11/15 thru 6/10/16 and 6/10/16 thru 12/10/16 ⁴⁴
David Flores	October 31, 2016	Letter of Experience allegedly from Empower for the period 8/18/15 thru 2/18/17 ⁴⁵
Edgar Lorenzo	April 15, 2016	Letter of Experience allegedly from Pronto General Agency for the periods 9/26/15 thru 3/26/16 and 3/26/16 thru 9/26/16 ⁴⁶
Idia Garza	April 29, 2016	Letter of Experience allegedly from Empower for the period 12/4/14 thru 6/4/16 ⁴⁷
Javier Gonzalez	December 16, 2016	Certificate of Insurance allegedly from Vision Insurance Company for the periods 2/18/15 thru 8/18/15, 8/18/15 thru 2/18/16, 2/18/16 thru 8/18/16, and 8/18/16 thru 2/18/17 ⁴⁸
Jorge Marquina	July 23, 2016	Letter of Experience allegedly from Empower for the period 1/23/16 thru 7/23/16 ⁴⁹

⁴² Tr. Vol. 1 at 85.

⁴³ Staff Ex. 1 at 6065; Staff Ex. 24, Stipulation No. 19.

⁴⁴ Staff Ex. 2 at 6054; Staff Ex. 24, Stipulation No. 4.

⁴⁵ Staff Ex. 3 at 6072; Staff Ex. 24, Stipulation No. 20.

⁴⁶ Staff Ex. 4 at 6042; Staff Ex. 24, Stipulation No. 10.

⁴⁷ Staff Ex. 5 at 6046; Staff Ex. 24, Stipulation No. 21.

⁴⁸ Staff Ex. 6 at 6079; Staff Ex. 24, Stipulation No. 14.

⁴⁹ Staff Ex. 7 at 6056; Staff Ex. 24, Stipulation No. 22.

Applicant	Application Date	Fabricated/Altered Proof of Insurance submitted by Respondents
Jose Salazar	July 29, 2016	Certificate of Insurance allegedly from Vision Insurance Company for the periods 2/23/15 thru 8/23/15, 8/23/15 thru 2/23/16, 2/23/16 thru 8/23/16 ⁵⁰
Jose Velez	December 31, 2016	Letter of Certificate allegedly from Pronto General Agency for the periods 7/17/15 thru 1/17/16, 1/17/16 thru 7/17/16, and 7/17/16 thru 1/17/17 ⁵¹
Maribel Garcia	October 12, 2016	Letter of Experience allegedly from Empower for the period 5/4/15 thru 11/04/16 ⁵²
Robin Garza	November 11, 2016	Letter of Experience allegedly from Empower for the period 7/20/15 thru 11/20/16 ⁵³
Ruben Mejia Castaneda	August 4, 2016	Letter of Experience allegedly from Pronto General Agency for the periods 8/06/15 thru 2/06/16, and 2/06/16 thru 8/06/16 ⁵⁴
Sofia Pineda	May 14, 2016	Letter of Experience allegedly from Pronto General Agency for the periods 1/29/15 thru 7/29/15, 7/29/15 thru 1/29/16, and 1/29/16 thru 7/29/16 ⁵⁵
Tania Guerra	October 3, 2016	Certificate of Insurance allegedly from Vision Insurance Company for the periods 2/10/16 thru 8/10/16, and 8/10/16 thru 2/10/17 ⁵⁶

3. Mendota

Sharon Mason, the underwriting and quality assurance administrator for Mendota, testified that Mendota is the MGA for Home State.⁵⁷ As such, Mendota develops the rates, the

⁵⁰ Staff Ex. 8 at 6058; Staff Ex. 24, Stipulation No. 15.

⁵¹ Staff Ex. 9 at 6081; Staff Ex. 24, Stipulation No. 11.

⁵² Staff Ex. 10 at 6070; Staff Ex. 24, Stipulation No. 25.

⁵³ Staff Ex. 11 at 6074; Staff Ex. 24, Stipulation No. 26.

⁵⁴ Staff Ex. 12 at 6061; Staff Ex. 24, Stipulation No. 12.

⁵⁵ Staff Ex. 13 at 6048; Staff Ex. 24, Stipulation No. 13.

⁵⁶ Staff Ex. 14 at 6068; Staff Ex. 24, Stipulation No. 18.

⁵⁷ Tr. Vol. 1 at 97.

rules, the policies, and underwrites and services the insurance policies for Home State.⁵⁸ Mendota also decides who can serve as agents and determines the rate structure.⁵⁹

According to Ms. Mason, Mendota works through independent agents. Mendota appoints the agents, but the appointment is set up through Home State. Mendota had a commission agreement in place with Protector.⁶⁰ Typically, the commission was 15 percent for new business and 10-12 percent for renewals per policy.⁶¹ She explained that agents had access to Mendota's agent website that contained the policies and quotes.⁶² Agents enter the prospective insured's information and are then able to obtain a quote for the insurance. If the insured accepts the quote, the agent is usually able to upload that policy directly to Mendota.⁶³ Ms. Mason confirmed that a lower rate was charged when the applicant had proof of prior coverage. In general, this prior coverage discount could have been 10 to 15 percent of the premium.⁶⁴

Mendota was able to verify proof of prior coverage if the insurer of that coverage was a standard insurance carrier that participates in the LexisNexis system.⁶⁵ If it was a nonstandard insurance carrier, the agent had to input the information regarding the insurer for the prior coverage into the computer and provide Mendota with proof of this prior coverage.⁶⁶

Ms. Mason testified that for the applicants set forth below, Mendota sent a fax cover page to Protector requesting documentation to establish proof of prior coverage.⁶⁷ Acceptable forms of proof of prior coverage included a Renewal Notice, Declaration Page, Letter of Experience,

⁵⁸ Tr. Vol. 1 at 97.

⁵⁹ Tr. Vol. 1 at 98.

⁶⁰ Tr. Vol. 1 at 99.

⁶¹ Tr. Vol. 1 at 100.

⁶² Tr. Vol. 1 at 101.

⁶³ Tr. Vol. 1 at 101.

⁶⁴ Tr. Vol. 1 at 100-03.

⁶⁵ Tr. Vol. 1 at 108.

⁶⁶ Tr. Vol. 1 at 106-07.

⁶⁷ Tr. Vol. 1 at 111.

and a Non-renewal notice.⁶⁸ Respondents in turn submitted proof of coverage that Mendota accepted as valid. She confirmed that Mendota relied on these proofs of prior coverage in issuing a policy with a discounted or lower premium.⁶⁹ According to Ms. Mason, Mendota was harmed because it did not charge these applicants the correct rate for the risk insured.⁷⁰

Applicant	Application Date	Fabricated/Altered Proof of Insurance submitted by Respondents to Mendota
Juana Lopez	May 1, 2017	Declaration allegedly from Alinsco for the period 10/31/16 thru 4/30/17 ⁷¹
Maria Torres	April 3, 2017	Declaration allegedly from Alinsco for the periods 7/14/16 thru 1/14/17 and 1/14/17 thru 7/14/17 ⁷²
Sandra Ziegler Jones	November 8, 2016	Certificate of Insurance allegedly from Vision Insurance Company for the periods 12/10/14 thru 6/10/15, 6/10/15 thru 12/10/15, 12/10/15 thru 6/10/16, and 6/10/16 thru 12/10/16 ⁷³
Santiago Medrano Lozoya	February 9, 2017	Certificate of Insurance allegedly from Vision Insurance Company for the periods of 12/20/15 thru 6/20/16, 6/20/16 thru 12/20/16, and 12/20/16 thru 6/20/17 ⁷⁴

Ms. Mason agreed that Mendota is not the insurer, but stated that Mendota administers and services the policies issued by Home State.⁷⁵

⁶⁸ Tr. Vol. 1 at 110-11. See also Staff Exs. 15-18.

⁶⁹ Tr. Vol. 1 at 112.

⁷⁰ Tr. Vol. 1 at 113, 118.

⁷¹ Staff Ex. 15 at 6863, Staff Ex. 24, Stipulation No. 23.

⁷² Staff Ex. 16 at 6778-79; Staff Ex. 24, Stipulation No. 24.

⁷³ Staff Ex. 17 at 6720; Staff Ex. 24, Stipulation No. 16.

⁷⁴ Staff Ex. 18 at 6642; Staff Ex. 24, Stipulation No. 17.

⁷⁵ Tr. Vol.1 at 123-24.

C. Sanctions

1. Respondents' Past Practices

According to Respondent Barrientos, the clients Respondents served were “[h]umble, poor people, from middle class down.”⁷⁶ Although she admitted that Respondents falsified documents, Respondent Barrientos insisted Respondents were trying to help the 23 applicants afford the premiums to insure their vehicles, not just to sell more policies.⁷⁷ Respondent Barrientos said she did not tell the applicants that she was going to falsify information to secure a reduction in the premiums; it was something she and Protector did.⁷⁸ She also conceded that when she sold a policy, Respondents made a commission from the sale. When the Department began its investigation into Respondents’ insurance practice, Respondent Barrientos stated she stopped fabricating fictitious proofs of prior coverage and Respondents’ business volume decreased.⁷⁹

Respondent Rodriguez testified that before the Department investigation, Protector’s business more than doubled.⁸⁰ She asserted that Protector falsified prior coverage documents not only to sell more policies, but also to help their clients.⁸¹ Respondent Rodriguez conceded that when she discovered an employee had falsified documents in 2014, she fired the employee.⁸² Although Respondent Rodriguez testified that she did not personally create the fictitious proofs of prior coverage, she stipulated to knowing these documents were not genuine and admitted she created fake prior coverage documents during her February 13, 2018 deposition.⁸³ She also admitted that while she knew of the creation of falsified documents as early as 2014, she allowed

⁷⁶ Tr. Vol. 2 at 217.

⁷⁷ Tr. Vol. 2 at 215.

⁷⁸ Tr. Vol. 2 at 218.

⁷⁹ Tr. Vol. 2 at 215.

⁸⁰ Tr. Vol. 2 at 225.

⁸¹ Tr. Vol. 2 at 227.

⁸² Tr. Vol. 2 at 221.

⁸³ Tr. Vol. 2 at 221-24.

this business practice to continue until the Department brought this disciplinary action in April 2017.⁸⁴

After April 2017, Respondent Rodriguez represented that Respondents took steps to improve their business practices. She explained that they hired John Raspazzo to help them restructure and to build the mission, vision, and values of the company into an employee handbook.⁸⁵ All of Protector's employees have to sign a statement regarding the company's values. Mr. Raspazzo did not testify.

2. Consent Orders Issued Against Other Agents

Respondents asserted that because the Commissioner signed four Consent Orders with other unrelated agents who violated Code § 4005.101(b)(5) and only imposed an administrative penalty, the Department may only impose an administrative penalty against Respondents. However, all four Consent Orders were based on agreements—not a contested case hearing. Consent Order No. 3324 entered on June 5, 2014, dealt with an instance in which the insurance agent used a policy number previously issued to a different customer. The agent asserted that the issuance of the certificate was a mistake. The Commissioner ordered the agent to pay a \$2,000 administrative penalty.⁸⁶

Consent Order No. 3621, issued on October 30, 2014, dealt with allegations that the agent set up 56 insured's accounts for electronic funds transfers (EFTs) using a generic bank account number. After the insured failed to provide correct bank account information, the agent failed to remove the EFT discount. The agent also allegedly submitted 22 fictitious or altered Letters of Experience to the insurer company in March and April 2013 to receive premium discounts. As a result of the settlement agreement, the Commissioner ordered the agent to pay a \$5,000 administrative penalty.⁸⁷

⁸⁴ Tr. Vol. 2 at 225.

⁸⁵ Tr. Vol. 2 at 228. *See* Respondents Ex. 6.

⁸⁶ Respondents Ex. 1.

⁸⁷ Respondents Ex. 2.

On August 30, 2017, the Commissioner in Consent Order No. 2017-5197 ordered an agent to pay a \$10,000 administrative penalty and to complete 30 additional hours of continuing education, among other things. According to the Consent Order, the agent engaged in the insurance business for three years before becoming licensed to do so, submitted at least 16 applications with false information, and created false prior coverage documents. After the insurer terminated his appointment, the agent continued to issue the insurer's policies. The agent also accepted premium payments from insureds, but did not remit these premium payments to the insurer.⁸⁸

In a Consent Order entered on August 31, 2017, under No. 2017-5204, the Commissioner ordered an agent to pay a \$3,500 administrative penalty because an unlicensed customer service representative hired by the agent was allowed to engage in the business of insurance. Between July 2014 and April 2015, the agent's company submitted 27 fictitious proofs of prior insurance documents and three fictitious teaching certificates to qualify for lower premium rates. The agent maintained that an unlicensed employee submitted the fictitious documents to the insurance company.⁸⁹

3. Code § 84.022

Respondents also asserted that Code § 84.022 provides guidance on the applicable standards for imposing disciplinary sanctions.⁹⁰ However, Code § 84.002 only addresses the imposition of administrative penalties, which Staff pointed out they are not seeking. It does not address other disciplinary actions.

According to Respondents, because fraud requires evidence of harm, Staff "cannot credibly substantiate the gravity of any injury justifying revocation."⁹¹ Respondents argued they do not have a history of previous violations and based on Respondents' compliance over the past

⁸⁸ Respondents Ex. 3.

⁸⁹ Respondents Ex. 4.

⁹⁰ Respondents' Brief in Opposition to Licensure Revocation (Respondents' Brief) at 3.

⁹¹ Respondents' Brief at 4.

year with the Code and insurance rules, revocation is unnecessary “to prevent recidivism or to preserve the public interest.”⁹² Respondents further asserted that once the Department began its investigation, they stopped fabricating fictitious proofs of prior coverage. They also hired Mr. Raspazzo, who helped them create a Mission Statement and an Employee Handbook that every new employee has to sign.⁹³ Respondents contend they provide a valuable service to an underserved population in Cameron County, Texas,⁹⁴ and request that they be permitted to continue to retain their license, and at the most, be required to pay an administrative penalty.

IV. ALJ'S ANALYSIS

A. Dishonest or Fraudulent Acts or Practices

Pursuant to Code § 4005.101(b)(5), the Department may discipline a license holder who has engaged in “fraudulent or dishonest acts or practices.” Respondents stipulated that between 2015 and 2017, Respondents fabricated documents to misrepresent that 23 applicants had prior insurance coverage entitling them to a discounted premium when Respondents knew the applicants had no prior coverage. Respondent Barrientos admitted that the applicants were unaware that Respondents were submitting fraudulent documents to the insurers to secure a discounted premium rate. Respondents argued their motivation to engage in such fraudulent and dishonest acts was to aid the poor in Cameron County, Texas. Yet, Respondents presented no credible evidence to show these 23 applicants were so poor that they could not afford to pay the premiums owed. In addition, there was no evidence that Respondents’ altruism extended to applying any portion of their commissions to aid these applicants. Indeed, Respondents’ business grew significantly as they submitted fictitious proofs of prior coverage with the applications to insurers or the insurer’s MGA with the intent that the insurer or MGA rely on this false information to obtain a reduced or discounted premium for the applicants. When Respondents were investigated in April 2017, Respondents stopped engaging in these dishonest and fraudulent practices and their business declined.

⁹² Respondents’ Brief at 5.

⁹³ Respondents Ex. 6.

⁹⁴ Respondents Ex. 7.

Texas law defines fraud as “an act, omission, or concealment in breach of a legal duty, trust, or confidence justly imposed, when the breach causes injury to another or the taking of an undue and unconscientious advantage.”⁹⁵ As independent agents appointed to sell insurance on behalf of insurers, Respondents owed a duty to honestly disclose that these applicants did not have prior coverage. The credible evidence establishes that Respondents fabricated fake documents to mislead the insurers and the insurer’s MGA into awarding these applicants the prior coverage discount or reduction in the premium rate to which the applicants were not entitled.

Respondents’ fraudulent and dishonest practices harmed not only the insurers by denying them the premium to which the insurers were entitled, but also the MGAs, Empower and Mendota, because the MGAs did not receive the commission they should have received had the discount not been applied. Respondents’ argument—that had they not secured the discount in premiums for these applicants, the applicants would not have been able to buy the insurance—is not supported by the credible evidence. Respondents offered no clear evidence to show these 23 applicants could not afford insurance without the improperly awarded reductions or discounts for prior coverage. None of the applicants testified on Respondents’ behalf to verify that without Respondent’s dishonesty in fabricating fictitious proofs of prior coverage to obtain a discount in the premiums, they would not have been able to afford the insurance. Therefore, the ALJ finds Respondents intentionally engaged in fraudulent and dishonest practice in violation of Code § 4005.101(b)(5).

B. Sanctions

The remaining issue concerns what sanctions are appropriate for Respondents’ violations of the Code. Although Respondents argued that previous Consent Orders restrict the sanction to an administrative penalty of no more than \$5,000, the ALJ disagrees. The Consent Orders discussed involve different agents, different facts, and were the result of informal negotiations. The four Consent Orders are not dispositive in this case. Respondents created fictitious proofs of prior coverage for 23 applicants over approximately a two-year period. Respondents knew

⁹⁵ *Flanary v. Mills*, 150 S.W.3d 785, 795 (Tex. App.—Austin 2004, pet. denied).

falsifying documentation as an agent was wrong, and had fired an employee who did so. Respondents' position that because they discontinued this fraudulent and dishonest practice after the Department began its investigation, they should not have their respective licenses revoked is not persuasive. Complying with the Code and the Department's rules after being caught violating the Code is not a mitigating factor. Respondents knew that falsifying documents was wrong, but did it anyway in a desire to increase business. Such flagrant disregard for the Code is not excused just because Respondents began complying with the Code after the Department initiated an investigation into their business practices. The ALJ recommends that the Department impose the sanctions recommended by Staff and revoke the licenses held by Respondents.

V. FINDINGS OF FACT

1. Respondent Denice Lizeth Rodriguez, individual identification number 830671, holds a limited lines agent license issued by the Texas Department of Insurance (Department) on September 7, 2010.
2. Respondent Marissa Barrientos, individual identification number 832938, holds a limited lines agent license issued by the Department on January 1, 2011.
3. Respondent Protector Insurance, LLC (Protector), firm identification number 77327, holds a limited lines agency license issued by the Department on June 5, 2013.
4. Respondents Rodriguez and Barrientos are co-owners of Protector (collectively referred to as Respondents).
5. As third-party agents, Respondents had appointments to sell automobile liability insurance to clients for the following insurers:
 - Alinsco Insurance Company (Alinsco) through its Managing General Agency (MGA) Empower Insurance Company (Empower),
 - American Access Casualty Insurance (American Access), and
 - Home State County Mutual Insurance through its MGA Mendota Insurance (Mendota).
6. Respondents intentionally falsified documents to prove the following applicants had prior coverage that they submitted with the application for automobile liability insurance to Empower, intending that Empower rely on the fraudulent documents identified below to obtain a reduced policy premium from Alinsco for the following applicants:

Applicant	Application Date	Fabricated/Altered Proof of Insurance documents submitted by Respondents
Inocencia Garza	July 20, 2015	Texas Liability Insurance Card allegedly from Lyndon Southern Insurance Company for the periods 7/05/14 thru 1/05/15 and 1/05/15 thru 7/05/15
Mariana Martinez Perez	July 24, 2015	Texas Liability Insurance Card allegedly from Home State County Mutual Insurance Company (Home State) for the period 1/04/15 thru 7/04/15
Micaela Mirales	April 15, 2017	Texas Liability Insurance Card allegedly from Home State for the periods 4/10/16 thru 10/10/16 and 10/12/16 thru 4/12/17
Sanjuana Munoz	January 26, 2017	Texas Liability Insurance Card allegedly from Home State for the periods 1/12/16 thru 7/12/16 and 7/12/16 thru 1/12/17
Wilfredo Perez	April 3, 2017	Texas Liability Insurance Card allegedly from Lyndon Southern Insurance Company for the period 7/28/16 thru 1/28/17

7. Empower relied on the fraudulent documents Respondents submitted to prove prior coverage and charged these applicants a lower or discounted premium rate for the insurance policy issued. Respondents were paid a commission for these applications.
8. Respondents intentionally falsified documents to prove the following applicants had prior coverage that they submitted with the application for automobile insurance to American Access, intending that American Access rely on the fraudulent documents to obtain a reduced policy premium for the following applicants:

Applicant	Application Date	Fabricated/Altered Proof of Insurance submitted by Respondents
Avigail Martinez	September 9, 2016	Letter of Experience allegedly from Empower for the period 9/11/15 thru 9/11/16
Cinthia Estrada Ruiz	July 19, 2016	Letter of Experience allegedly from Apollo Managing General Agency for the periods 12/11/15 thru 6/10/16 and 6/10/16 thru 12/10/16
David Flores	October 31, 2016	Letter of Experience allegedly from Empower for the period 8/18/15 thru 2/18/17
Edgar Lorenzo	April 15, 2016	Letter of Experience allegedly from Pronto General Agency for the periods 9/26/15 thru 3/26/16 and 3/26/16 thru 9/26/16
Idia Garza	April 29, 2016	Letter of Experience allegedly from Empower for the period 12/4/14 thru 6/4/16

Applicant	Application Date	Fabricated/Altered Proof of Insurance submitted by Respondents
Javier Gonzalez	December 16, 2016	Certificate of Insurance allegedly from Vision Insurance Company for the periods 2/18/15 thru 8/18/15, 8/18/15 thru 2/18/16, 2/18/16 thru 8/18/16, and 8/18/16 thru 2/18/17
Jorge Marquina	July 23, 2016	Letter of Experience allegedly from Empower for the period 1/23/16 thru 7/23/16
Jose Salazar	July 29, 2016	Certificate of Insurance allegedly from Vision Insurance Company for the periods 2/23/15 thru 8/23/15, 8/23/15 thru 2/23/16, 2/23/16 thru 8/23/16
Jose Velez	December 31, 2016	Letter of Certificate allegedly from Pronto General Agency for the periods 7/17/15 thru 1/17/16, 1/17/16 thru 7/17/16, and 7/17/16 thru 1/17/17
Maribel Garcia	October 12, 2016	Letter of Experience allegedly from Empower for the period 5/4/15 thru 11/04/16
Robin Garza	November 11, 2016	Letter of Experience allegedly from Empower for the period 7/20/15 thru 11/20/16
Ruben Mejia Castaneda	August 4, 2016	Letter of Experience allegedly from Pronto General Agency for the periods 8/06/15 thru 2/06/16, and 2/06/16 thru 8/06/16
Sofia Pineda	May 14, 2016	Letter of Experience allegedly from Pronto General Agency for the periods 1/29/15 thru 7/29/15, 7/29/15 thru 1/29/16, and 1/29/16 thru 7/29/16
Tania Guerra	October 3, 2016	Certificate of Insurance allegedly from Vision Insurance Company for the periods 2/10/16 thru 8/10/16, and 8/10/16 thru 2/10/17

9. American Access relied on the fraudulent documents Respondents submitted to prove prior coverage and charged these applicants a lower premium rate for the insurance policy issued. Respondents were paid a commission for these applications.
10. Respondents intentionally falsified the documents identified below to prove prior coverage that they submitted with the application for automobile insurance to Mendota intending that Mendota rely on the fraudulent documents to obtain a reduced policy premium from Home State for the following applicants:

Applicant	Application Date	Fabricated/Altered Proof of Insurance submitted by Respondents to Mendota
Juana Lopez	May 1, 2017	Declaration allegedly from Alinsco for the period 10/31/16 thru 4/30/17
Maria Torres	April 3, 2017	Declaration allegedly from Alinsco for the periods 7/14/16 thru 1/14/17 and 1/14/17 thru 7/14/17
Sandra Ziegler Jones	November 8, 2016	Certificate of Insurance allegedly from Vision Insurance Company for the periods 12/10/14 thru 6/10/15, 6/10/15 thru 12/10/15, 12/10/15 thru 6/10/16, and 6/10/16 thru 12/10/16
Santiago Medrano Lozoya	February 9, 2017	Certificate of Insurance allegedly from Vision Insurance Company for the periods of 12/20/15 thru 6/20/16, 6/20/16 thru 12/20/16, and 12/20/16 thru 6/20/17

11. Mendota relied on the fraudulent documents Respondents submitted to prove prior coverage and charged these applicants a discounted or lower premium rate for the insurance policy issued by Home State. Respondents were paid a commission for these applications.
12. Respondents continued this fraudulent and dishonest practice of fabricating fraudulent proofs of prior coverage until the Department began its investigation in 2017.
13. On November 20, 2017, Staff of the Department filed a Notice of Hearing and sent it to Respondents. On November 21, 2017, Respondents filed a Written Response to Petitioner's Notice of Hearing.
14. On January 30, 2018, Staff filed and issued a First Amended Notice of Hearing to Respondents. The notice contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and either a short, plain statement of the factual matters asserted or an attachment that incorporates by reference the factual matters asserted in the complaint.
15. The hearing on the merits was held on April 9-10, 2018, before Administrative Law Judge Catherine Egan at the State Office of Administrative Hearings (SOAH) in Austin, Texas. Staff attorneys Cassie Tighe and Casey Seeboth represented Staff; attorneys Hector De Leon and Athena Ponce represented Respondents. The record closed on June 28, 2018, after the parties filed post-hearing briefs.

VI. CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter. Tex. Ins. Code §§ 82.051-.055, 4001.002, 4005.101-.102, 4051.101 and 4054.101.
2. SOAH has jurisdiction to conduct the administrative hearing in this matter, including the authority to issue a Proposal for Decision with Findings of Fact and Conclusions of Law. Tex. Gov't Code ch. 2003; Tex. Ins. Code § 4005.104.
3. Proper and timely notice of the hearing was provided. Tex. Gov't Code §§ 2001.051-.052; Tex. Ins. Code (Code) § 4005.104(b).
4. The hearing was conducted pursuant to the Administrative Procedure Act. Texas Gov't Code ch. 2001.
5. Staff had the burden of proof to establish grounds for revocation of Respondents' licenses. 1 Tex. Admin. Code § 155.427.
6. Respondents engaged in fraudulent or dishonest acts or practices in violation of Code § 4005.101(b)(5).
7. Respondents violated the Code, which is grounds for taking disciplinary action against a license holder pursuant to Code §§ 82.051-.053 and 4005.101(b)(5).
8. The Department is authorized to revoke Respondents' licenses. Code § 4005.101.

SIGNED August 27, 2018.



CATHERINE C. EGAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

2018- 5778

State Office of Administrative Hearings



Lesli G. Ginn
Chief Administrative Law Judge

November 5, 2018

TO: Mr. Kent C. Sullivan, Commissioner
Texas Department of Insurance
333 Guadalupe Street
Austin, TX 78701

VIA FACSIMILE (512) 490-1045

RE: SOAH Docket No. 454-18-0998.C, Texas Department of Insurance v.
Protector Insurance, LLC, Denice Lizeth Rodriguez and Marissa Barrientos

Dear Commissioner Sullivan,

The Proposal for Decision (PFD), issued on August 27, 2018, was mailed to Protector Insurance, LLC, Denice Lizeth Rodriguez, and Marissa Barrientos (Respondents), and hand-delivered to the staff (Staff) for the Texas Department of Insurance (Department) the same day. On September 14, 2018, Respondents filed their exceptions to the PFD (the exceptions). Staff filed a response to Respondent's exceptions on September 28, 2018 (Staff's response). On October 11, 2018, Respondents filed a reply to Staff's response (Respondents' reply).

According to 1 Texas Administrative Code § 155.507(b) "[u]nless the referring agency's rules apply by statute, exceptions shall be filed within 15 days after the date the proposal for decision is issued." Consequently, exceptions to the PFD had to be filed with the State Office of Administrative Hearings (SOAH) by Tuesday, September 11, 2018. Respondents did not file their exceptions to the PFD with SOAH until September 14, 2018. Staff objected to Respondents' exception as being untimely filed. In response, Respondents argued that they believed they had 18 days to file based on a conversation Respondents' counsel had with the Administrative Law Judge's (ALJ's) administrative technician. As the parties are aware, SOAH's procedural rules govern this proceeding. The rule regarding exceptions does not state that the exceptions are due within 15 days of the date a party is served with a PFD, but instead the date the PFD is issued. Therefore, the ALJ agrees with Staff that Respondents' exceptions were untimely filed.

Although Respondents' exceptions were untimely filed, the ALJ reviewed Respondents' exceptions to the PFD, Staff's response, and Respondents' reply. After carefully considering the exceptions, Staff's response, and Respondents' reply, the ALJ recommends no changes to the PFD. Respondents' exceptions do not raise new arguments, but instead reiterate previous arguments made by Respondents and discussed in the PFD. Respondent's first 38 pages of

exceptions address portions of the ALJ's discussion. Respondent again asserts that Staff's notice of hearing was insufficient because it did not specifically refer to the insurance company's agents, the managing general agents (MGAs). The MGAs received and processed Respondent's fraudulent applications for insurance on behalf of the insurance companies. Respondents assert that because Staff did not specifically reference the MGAs in the Notice of Hearing, Respondents were denied proper notice and due process. Staff argues that Texas Government Code § 2001.052 requires a "short plain statement of the factual matters asserted" and its notice of hearing satisfied this requirement. Additionally, Staff argues the Texas Insurance Code § 4053.001(3) defines an MGA as "a person, firm, or corporation . . . that is authorized by an insurer to accept or process on the insurer's behalf insurance policies produced and sold by other agents."¹ The ALJ finds Respondent's exception on this issue unpersuasive.

Respondents also contend that the ALJ should have sustained their objection to allowing Staff's witnesses John Finucane, underwriting manager at American Access Casualty Company; Sharon Mason, an employee with Mendota Insurance Company; and Maria Cortez, Chief Operations Officer (COO) with Empower Managing General Agency to appear telephonically to testify at the hearing. Respondent contends that despite SOAH's procedural rule granting an unopposed motion for telephonic testimony, they could circumvent this rule by including in the Certificate of Conference the statement that they reserved all objections to the testimony. The ALJ disagreed, but offered to continue the hearing to allow Respondents time to depose these witnesses. Respondents declined. The ALJ is not persuaded by Respondents' exception and recommends no changes to the discussion portion of the PFD regarding this issue.

According to Respondents, they were also denied due process because Staff seeks revocations of their respective licenses which they contend is a departure from the Department's prior treatment for the same violations. Respondents assert that the Commissioner previously entered four Consent Orders with other agents who violated Code § 4005.101(b)(5) and only imposed an administrative penalty. Therefore, Respondent reasons the Department may only impose an administrative penalty against Respondents. As noted in the PFD, all four Consent Orders were based on agreements—not a contested case hearing. As discussed in the PFD, the four Consent Orders involved different agents, different facts, and were the result of informal negotiations. They are not dispositive in this case.

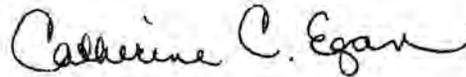
Respondents object to Finding of Fact Nos. 6, 7, 9, 10, 11 and 14 asserting that matters concerning MGAs were not properly noticed and were outside the scope of the hearing. Additionally, Respondents argue that Mr. Finucane, Ms. Mason, and COO Cortez should not have been permitted to testify. For the reasons set forth above and in the PFD, the ALJ finds no reason to modify or change these findings.

Respondents object to Conclusion of Law Nos. 1, 3, 5, 6, 7, and 8. According to Respondents, neither the definition of "insurer" in Texas Insurance Code § 400.003(6) nor § 4001.002 includes MGAs. Respondents again reason that because the hearing included issues concerning the insurance companies, not the insurance companies' MGAs, notice was not timely or proper and violated Texas Government Code § 2001.052. For the reasons expressed above, the ALJ disagrees.

¹ See also, Tex. Ins. Code § 4053.101, .106.

In conclusion, the ALJ recommends no changes to the PFD. The PFD is ready for your consideration.

Sincerely,



Catherine C. Egan
Administrative Law Judge

xc: All Parties of Record

2018- 5778

STATE OFFICE OF ADMINISTRATIVE HEARINGS

AUSTIN OFFICE
300 West 15th Street Suite 504
Austin, Texas 78701
Phone: (512) 475-4993
Fax: (512) 322-2061

SERVICE LIST

AGENCY: Insurance, Texas Dept. of (TDI)
STYLE/CASE: PROTECTOR INSURANCE LLC, DENICE LIZETH
RODRIGUEZ, AND MARISSA BARRIENTOS
SOAH DOCKET NUMBER: 454-18-0998.C
REFERRING AGENCY CASE: 9964, 13381, 13382

STATE OFFICE OF ADMINISTRATIVE
HEARINGS

ADMINISTRATIVE LAW JUDGE
ALJ CATHY C. EGAN

REPRESENTATIVE / ADDRESS

PARTIES

HECTOR DE LEON
DE LEON WASHBURN & WARD, P.C.
BARTON OAKS PLAZA V
901 SOUTH MOPAC BLVD, SUITE 230
AUSTIN, TX 78701
(512) 478-5308 (PH)
(512) 482-8628 (FAX)

MARISSA BARRIENTOS

DENISE LIZBETH RODRIGUEZ

PROTECTOR INSURANCE, LLC.

CASSIE TIGUE
ATTORNEY
TEXAS DEPARTMENT OF INSURANCE
DIVISION OF WORKERS' COMPENSATION
333 GUADUALPE, MC 110-1A
AUSTIN, TX 78701
(512) 676-6356 (PH)
(512) 490-1020 (FAX)
cassie.teague@tdi.texas.gov

TEXAS DEPARTMENT OF INSURANCE

2018- 5778

KENT C. SULLIVAN
COMMISSIONER
TEXAS DEPARTMENT OF INSURANCE
333 GUADUALPE, MC 110-1A
AUSTIN, TX 78701

(512) 490-1045 (FAX)

TEXAS DEPARTMENT OF INSURANCE

xc: Docket Clerk, State Office of Administrative Hearings
CHIEF CLERK , TDI, Fax No. 512-490-1064