

No. **2023-8366**

**Official Order
of the
Texas Commissioner of Workers' Compensation**

Date: 11/30/2023

Subject Considered:

New Hampshire Insurance Company
175 Water Street, Floor 18
New York, New York 10038-4976

Consent Order
DWC Enforcement File Nos. 32015, 32260, 32304, and 32564

General remarks and official action taken:

This is a consent order with New Hampshire Insurance Company (Respondent). The commissioner of the Texas Department of Insurance, Division of Workers' Compensation (DWC) considers whether DWC should take disciplinary action against Respondent.

Waiver

Respondent acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Respondent waives all of these rights, and any other procedural rights that apply, in consideration of the entry of this consent order.

Findings of Fact

1. Respondent holds a certificate of authority issued by the Texas Department of Insurance to transact the business of insurance pursuant to Tex. Ins. Code § 801.051-801.053 and is licensed to write multiple lines of insurance in Texas, including workers' compensation/employers' liability insurance.
2. Respondent was classified as "average" tier in the 2022, 2020, and 2018 Performance Based Oversight (PBO) assessments.

Failure to Timely Pay Death Benefits

File No. 32564

3. Respondent was required to make monthly death benefits payments to a deceased employee's beneficiaries from [REDACTED], through [REDACTED]. Respondent failed to timely pay \$ [REDACTED] in death benefits to the beneficiaries as follows:

| | Payment Period | Date Due | Date Paid | Days Late |
|----|----------------|------------|------------|-----------|
| a. | [REDACTED] | [REDACTED] | [REDACTED] | 109 |
| b. | [REDACTED] | [REDACTED] | [REDACTED] | 79 |
| c. | [REDACTED] | [REDACTED] | [REDACTED] | 46 |
| d. | [REDACTED] | [REDACTED] | [REDACTED] | 17 |

Failure to Comply with a DWC Order

File No. 32260

4. On [REDACTED], Respondent received Medical Fee Dispute Resolution (MFDR) Findings and Decision Order No. M4-22-0704-01.
5. The order required Respondent to pay \$ [REDACTED] plus accrued interest to a health care provider within 30 days of receipt, or by [REDACTED].
6. On [REDACTED], Respondent paid \$ [REDACTED] in compliance with the MFDR Order, which was 454 days late.

Failure to Timely Pay Attorney Fees Ordered by DWC

File No. 32304

7. Between [REDACTED], and [REDACTED], DWC ordered Respondent to pay attorney fees in connection with legal services provided to an injured employee. DWC ordered Respondent to pay attorney fees in the amount of 25% of each income benefit payment to the injured employee.

8. Between [REDACTED], and [REDACTED], Respondent issued multiple payments to the injured employee for unpaid income benefits. Respondent failed to pay attorney fees in an amount equal to 25 percent of the income benefits as follows:

| | Benefits paid | Attorney Fees Owed | Date Due | Date Paid | Days Late |
|----|---------------|--------------------|------------|------------|-----------|
| a. | \$ [REDACTED] | \$ [REDACTED] | [REDACTED] | [REDACTED] | 62 |
| b. | \$ [REDACTED] | \$ [REDACTED] | [REDACTED] | [REDACTED] | 34 |
| c. | \$ [REDACTED] | \$ [REDACTED] | [REDACTED] | [REDACTED] | 4 |

9. In total, Respondent paid \$ [REDACTED] in late attorney fees.

Failure to Timely Act on a Medical Bill

File No. 32015

10. On [REDACTED], a designated doctor (DD) provided medical services to an injured employee. On [REDACTED], Respondent received a completed medical bill for \$ [REDACTED] from the DD.
11. Respondent was required to act on the bill within 45 days of receiving it. The deadline to act was [REDACTED].
12. On [REDACTED], Respondent issued an explanation of benefits denying payment, which was 189 days late.
13. On [REDACTED], Respondent paid the \$ [REDACTED] medical bill.
14. On [REDACTED], Respondent paid \$ [REDACTED] in interest, which was four days late.

Assessment of Sanction

1. Failure to provide accurate death benefits in a timely and cost-effective manner is harmful to injured employees and the Texas workers' compensation system.
2. Failure to timely comply with DWC orders for payment of medical bills is not cost-effective and is harmful to injured employees and the Texas workers' compensation system.

3. Failure to timely pay attorney fees ordered by DWC hinders the division's goal of providing a fair and accessible dispute resolution process and is harmful to the Texas workers' compensation system.
4. Prompt payment of medical bills is imperative to DWC's goal of ensuring that injured employees have access to prompt, high-quality medical care. Failure to promptly pay medical bills harms medical providers economically, increases disputes and exhausts administrative resources in the workers' compensation system.
5. In assessing the sanction for this case, DWC fully considered the following factors in Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e):
 - the seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the prohibited act;
 - the history and extent of previous administrative violations;
 - the violator's demonstration of good faith, including actions it took to rectify the consequences of the prohibited act;
 - the penalty necessary to deter future violations;
 - whether the administrative violation had a negative impact on the delivery of benefits to an injured employee;
 - the history of compliance with electronic data interchange requirements;
 - to the extent reasonable, the economic benefit resulting from the prohibited act; and
 - other matters that justice may require, including, but not limited to:
 - PBO assessments;
 - prompt and earnest actions to prevent future violations;
 - self-report of the violation;
 - the size of the company or practice;
 - the effect of a sanction on the availability of health care; and
 - evidence of heightened awareness of the legal duty to comply with the Texas Workers' Compensation Act and DWC rules.
6. DWC found the following factors in Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e) to be aggravating: the seriousness of the violation; the history and extent of previous administrative violations; the penalty necessary to deter future violations; and whether the administrative violation had a negative impact on the delivery of benefits to an injured employee. Respondent's conduct involves \$ [REDACTED] in death benefits paid more than 100 days late and violation of DWC

orders. Further, the late medical bill payment was more than 200 days late and involved DD services, which do not require preauthorization and are essential to the Texas workers' compensation system. Respondent's disciplinary history includes two consent orders involving death benefits since [REDACTED], six consent orders involving late attorney's fees, three consent orders involving violations of MFDR orders, and 20 actions involving medical bills since [REDACTED].

7. DWC considered the following mitigating factors pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e): corrective actions including communication protocols, improved prioritization, and improved medical bill intake procedures.
8. Respondent acknowledges communicating with DWC about the relevant statute and rule violations alleged; that the facts establish that the administrative violation(s) occurred; and that the proposed sanction is appropriate, including the factors DWC considered under Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e).
9. Respondent acknowledges that, in assessing the sanction, DWC considered the factors in Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e).

Conclusions of Law

1. The commissioner has jurisdiction over this matter pursuant to Tex. Lab. Code §§ 402.001, 402.00111, 402.00114, 402.00116, 402.00128, 414.002, and 414.003.
2. The commissioner has the authority to dispose of this case informally pursuant to Tex. Gov't Code § 2001.056, Tex. Lab. Code §§ 401.021 and 402.00128(b)(6)-(7), and 28 Tex. Admin. Code § 180.26(h) and (i).
3. Respondent has knowingly and voluntarily waived all procedural rights to which it may have been entitled regarding the entry of this order, including, but not limited to, issuance and service of notice of intent to institute disciplinary action, notice of hearing, a public hearing, a proposal for decision, a rehearing by the commissioner, and judicial review.
4. Pursuant to Tex. Lab. Code § 415.021, the commissioner may assess an administrative penalty against a person who commits an administrative violation.

5. Pursuant to Tex. Lab. Code § 415.002(a)(20) and (22), an insurance carrier or its representative commits an administrative violation each time it violates a DWC rule or a provision of the Texas Workers' Compensation Act.

Failure to Timely Pay Death Benefits As and When They Accrue

File No. 32564

6. Pursuant to Tex. Lab. Code § 409.023, an insurance carrier is required to pay death benefits, as and when benefits accrue, without order from the commissioner.
7. Pursuant to Tex. Lab. Code § 415.002(a)(5), an insurance carrier or its representative commits an administrative violation if it fails to promptly pay death benefits if a legitimate dispute does not exist as to the insurance carrier's liability.
8. Pursuant to 28 Tex. Admin. Code § 132.16(a)(4)(B), an insurance carrier must pay monthly death benefits by the seventh day of the month.
9. Respondent violated Tex. Lab. Code §§ 409.023; 415.002(a)(5), (20), and (22); and 28 Tex. Admin. Code § 132.16 by failing to timely pay death benefits.

Failure to Timely Interest on Late Death Benefits

File No. 32564

10. Pursuant to Tex. Lab. Code § 408.064, accrued but unpaid death benefits and interest shall be paid in a lump sum.
11. Respondent violated Tex. Lab. Code §§ 408.064 and 415.002(a)(22) by failing to timely interest on late death benefit payments.

Failure to Comply with a DWC Order

File No. 32260

12. Pursuant to Tex. Lab. Code § 415.002(a)(17), an insurance carrier or its representative commits an administrative violation if it fails to pay an order awarding benefits.

13. Pursuant to Tex. Lab. Code §§ 415.0035(e) and 415.021(a), an insurance carrier commits an administrative violation by violating, failing to comply with, or refusing to comply with a DWC order.
14. Respondent violated Tex. Lab. Code §§ 415.002(a)(17) and (22); 415.021(a); and 415.0035(e) by failing to comply with a MFDR order.

Failure to Timely Pay Attorney Fees Ordered by DWC

File No. 32304

15. Pursuant to Tex. Lab. Code §§ 415.0035(e) and 415.021(a), an insurance carrier commits an administrative violation by violating, failing to comply with, or refusing to comply with a DWC order.
- 16.
17. Pursuant to 28 Tex. Admin. Code § 152.1(c), insurance carriers are required to pay attorney fees ordered by DWC. The insurance carrier must begin payment out of the approved income benefits by mailing a check to the attorney within seven days after receiving the order. As the insurance carrier pays income benefits, it must pay attorney fees until the fees are completely paid or income benefits cease.
18. Respondent violated Tex. Lab. Code §§ 415.002(a)(20) and (22); 415.021(a); 415.0035(e); and 28 Tex. Admin. Code § 152.1(c) by failing to timely comply with a DWC order to pay attorney fees.

Failure to Timely Act on a Medical Bill

File No. 32015

19. Pursuant to Tex. Lab. Code § 408.027 and 28 Tex. Admin. Code § 133.240, an insurance carrier is required to timely process and take final action on a completed medical bill within 45 days of receiving the bill.
20. Respondent violated Tex. Lab. Code §§ 408.027; 415.002(a)(20) and (22); and 28 Tex. Admin. Code § 133.240 by failing to pay, reduce, deny, or determine to audit a completed medical bill within 45 days of receiving the bill.

Failure to Timely Pay Interest for Medical Benefits

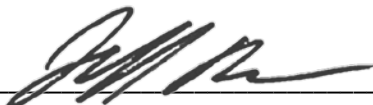
File No. 32015

21. Pursuant to Tex. Lab. Code § 413.019(a) and 28 Tex. Admin. Code § 134.130(a), an insurance carrier must pay interest on medical bills paid on or after the 60th day after the insurance carrier originally received the complete medical bill.
22. Respondent violated Tex. Lab. Code §§ 413.019(a), 415.002(a)(20) and (22) by failing to pay interest on medical bills paid on or after the 60th day after the insurance carrier originally received the complete medical bill.

Order


It is ordered that New Hampshire Insurance Company must pay an administrative penalty of \$17,000 within 30 days from the date the Commissioner signs the order.

After receiving an invoice, New Hampshire Insurance Company must pay the administrative penalty by electronic transfer using the State Invoice Payment Service, company check, cashier's check, or money order and make it payable to the "State of Texas." Mail the administrative penalty to the Texas Department of Insurance, Attn: DWC Enforcement Section, MC AO-9999, PO Box 12030, Austin, Texas 78711-2030.



Jeff Nelson
Commissioner
TDI, Division of Workers' Compensation

Approved Form and Content:



Stephen M. Jewell
Staff Attorney, Enforcement
Compliance and Investigations
TDI, Division of Workers' Compensation

Commissioner's Order
New Hampshire Insurance Company
DWC Enforcement File Nos. 32015, 32260, 32304, and 32564
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Unsworn Declaration

STATE OF NEW JERSEY §
§
COUNTY OF HUDSON §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is Peter Macdonald. I hold the position of Vice President and am the authorized representative of New Hampshire Insurance Company. My business address is:

30 Hudson Street, Jersey City, Hudson, NJ, 07302.
(Street) (City) (County) (State) (ZIP Code)

I am executing this declaration as part of my assigned duties and responsibilities. I declare under penalty of perjury that the facts stated in this document are true and correct.

Declarant

Executed on November 8, 2023.

**Confidential Information Redacted Texas
Labor Code §§402.083 and 402.092**