

No. 2019 5994

**OFFICIAL ORDER**  
*of the*  
**TEXAS COMMISSIONER OF WORKERS' COMPENSATION**

Date: JUN 25 2019

**Subject Considered:**

**EVEREST NATIONAL INSURANCE COMPANY**  
P.O. Box 830  
Liberty Corner, New Jersey 07938-0830

**CONSENT ORDER**  
TDI-DWC ENFORCEMENT FILE NO. 19246

**General remarks and official action taken:**

The commissioner of workers' compensation (commissioner) considers whether disciplinary action should be taken against Everest National Insurance Company (Everest).

**WAIVER**

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

**FINDINGS OF FACT**

The commissioner makes the following findings of fact:

1. Everest 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 workers' compensation/employers' liability insurance in Texas.
2. Everest was classified as "high" tier in the 2018 Performance Based Oversight (PBO) assessment. Everest was not selected to be tiered in the 2007, 2009, 2010, 2012, 2014, or 2016 PBO assessments.

**FAILURE TO TIMELY PAY INCOME BENEFITS IN ACCORDANCE  
WITH A DESIGNATED DOCTOR REPORT**

3. On [REDACTED], Everest received a report from a designated doctor (DD) in connection with a DD examination of an injured employee ordered by the Texas Department of Insurance, Division of Workers' Compensation (DWC).

4. The DD determined that the injured employee had not yet reached maximum medical improvement and had disability as of [REDACTED], through the date of the exam.
5. Everest was required to pay accrued income benefits no later than five days after receipt of the DD report, which was [REDACTED].
6. Everest issued partial payment of accrued temporary income benefits (TIBs) to the injured employee on [REDACTED], which was three days late. Everest issued payment for the previously underpaid balance of accrued TIBs on [REDACTED].

#### ASSESSMENT OF SANCTION

7. Failure to provide appropriate income benefits in a manner that is timely and cost-effective is harmful to injured employees and to the Texas workers' compensation system.
8. In assessing the sanction for this case, DWC appropriately and fully considered the following factors set forth 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 demonstrated good faith of the violator, including actions taken to rectify the consequences of the prohibited act;
  - the penalty necessary to deter future violations;
  - whether the administrative violation has negative impact on the delivery of benefits to an injured employee;
  - the history of compliance with electronic data interchange requirements;
  - other matters that justice may require, including but not limited to:
    - PBO assessments;
    - the promptness and earnestness of 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; and
  - to the extent reasonable, the economic benefit resulting from the prohibited act.
9. In assessing the sanction for this case, DWC found the following factors set forth 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; and the penalty necessary to deter future violations.
10. In assessing the sanction for this case, DWC found the following factors set forth in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e) to be mitigating: the

demonstrated good faith of the violator, including actions taken to rectify the consequences of the prohibited act.

11. Everest acknowledges that it has communicated with DWC regarding the relevant statutes and rules violated; the facts establishing that the administrative violation occurred; and the appropriateness of the proposed sanction, including how DWC considered the factors under TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e).
12. Everest acknowledges that, in assessing the sanction, DWC considered the factors set forth in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e).

### CONCLUSIONS OF LAW

The commissioner makes the following 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, 414.003, 415.002, and 415.021.
2. The commissioner has authority to informally dispose of this matter as set forth under TEX. GOV'T CODE § 2001.056, TEX. LAB. CODE § 402.00128(b)(7), and 28 TEX. ADMIN. CODE § 180.26(h).
3. Pursuant to TEX. LAB. CODE § 415.021, the commissioner may assess an administrative penalty against a person who commits an administrative violation.
4. Pursuant to TEX. LAB. CODE § 415.002(a)(20), an insurance carrier or its representative commits an administrative violation each time it violates a DWC rule.
5. Pursuant to TEX. LAB. CODE § 415.002(a)(22), an insurance carrier or its representative commits an administrative violation each time it fails to comply with a provision of the Texas Workers' Compensation Act.
6. Pursuant to TEX. LAB. CODE §§ 408.081, 409.023, and 415.002(a)(16), an insurance carrier shall pay benefits weekly, as and when the benefits accrue, without order from the commissioner.
7. Pursuant to 28 TEX. ADMIN. CODE § 127.10(h), an insurance carrier shall pay all benefits in accordance with the DD report for the issues in dispute no later than five days after receipt of the report.
8. Everest violated TEX. LAB. CODE §§ 409.023, 415.002(a)(16), (20), and (22) when it failed to timely pay accrued income benefits in accordance with the DD report within five days of receipt of the report.

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**ORDER**

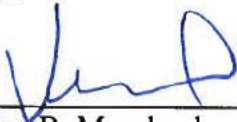
Everest National Insurance Company is ORDERED to pay an administrative penalty of \$1,500 within 30 days from the date of this Order.

The administrative penalty must be paid by company check, cashier's check, or money order made payable to the "State of Texas." Mail the administrative penalty to the Texas Department of Insurance, Attn: DWC Enforcement, MC 9999, P.O. Box 149104, Austin, Texas, 78714-9104.



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Cassie Brown  
Commissioner of Workers' Compensation

Approved as to Form and Content:



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Van B. Moreland  
Staff Attorney, DWC Enforcement  
Texas Department of Insurance

**AFFIDAVIT**

STATE OF New Jersey §  
   §  
COUNTY OF Somerset §

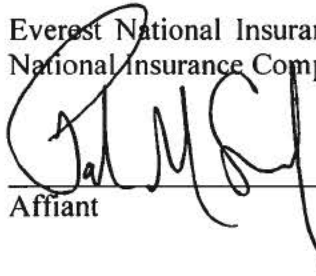
Before me, the undersigned authority, personally appeared the affiant, who being by me duly sworn, deposed as follows:

“My name is Patrick S fetz. I am of sound mind, capable of making this statement, and have personal knowledge of these facts which are true and correct.

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

Everest National Insurance Company waives rights provided by the Texas Labor Code and other applicable laws, and acknowledges the jurisdiction of the Texas commissioner of workers’ compensation.

Everest National Insurance Company is voluntarily entering into this consent order. Everest National Insurance Company consents to the issuance and service of this consent order.”

  
\_\_\_\_\_  
Affiant

SWORN TO AND SUBSCRIBED before me on May 17, 2019.

(NOTARY SEAL)

M. Gavin  
Signature of Notary Public

Michelle Gavin  
Printed Name of Notary Public

My Commission Expires: 9/25/2022

**MICHELLE GAVIN**  
**NOTARY PUBLIC OF NEW JERSEY**  
My Commission Expires 9/25/2022

Confidential Information Redacted  
Texas Labor Code §§402.083 & 402.092