

<b>TPCIGA FOR PETROSURANCE</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>CASUALTY COMPANY,</b>	§	
<i>Petitioner</i>	§	
	§	
v.	§	<b>OF</b>
	§	
<b>VISTA MEDICAL CENTER HOSPITAL,</b>	§	
<i>Respondent</i>	§	<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

TPCIGA for Petrosurance Casualty Company (TPCIGA) appealed the Findings and Decision of the Medical Review Division (MRD) of the Texas Workers’ Compensation Commission (TWCC) ordering reimbursement to Vista Medical Center Hospital (Provider) for treatment of a compensable injury. The Administrative Law Judge (ALJ) concludes that TPCIGA should reimburse the Provider \$58,584.17.

**I. PROCEDURAL HISTORY, EVIDENCE, AND BASIS FOR DECISION**

The ALJ convened a hearing on June 3, 2003. TPCIGA was represented by David L. Swanson, attorney. The Provider was represented by Christina L. Gutel, attorney. The evidentiary record closed at the conclusion of the hearing that day. The record of the hearing closed on August 8, 2003, with the filing of responses to closing briefs by both parties.

The threshold issue presented is whether TPCIGA is prohibited from raising new defenses or reasons for denials after the Provider filed its request for medical dispute resolution. The Provider’s position is that allowing the Carrier to present new denial reasons or defenses violates TWCC Rule 28 TEX. ADMIN. CODE § 133.307(j)(2).<sup>1</sup>

The Provider delivered services to the Claimant in September 2001, and billed Petrosurance Casualty Company (Petrosurance) in November 2001. On December 24, 2001, Petrosurance made a partial payment to the Provider, but failed to include an explanation of benefits. Petrosurance was placed in receivership on March 15, 2002, and TPCIGA began administering Petrosurance’s claims.

On July 23, 2002, the Provider filed a request for reconsideration, which was received by TPCIGA on July 29, 2002. In response, TPCIGA forwarded a request for more information to the Provider on August 8, 2002. The Provider did not respond to the request for more information, and TPCIGA did not respond to the Provider’s request for reconsideration with either additional payment or an explanation of benefits.

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<sup>1</sup> The rule provides that “[t]he response shall address only those denial reasons presented to the requestor prior to the date the initial request for medical dispute resolution was filed with the division and the other party. Responses shall not address new or additional denial reasons or defenses after the filing of an initial request. Any new denial reasons or defense raised shall not be considered for review.”

The Provider filed its request for medical dispute resolution on August 29, 2002. TPCIGA filed an untimely response to the request, and sent an explanation of benefits to the Provider on October 28, 2002. The MRD issued its decision on November 22, 2002, with a finding that the Provider did not have an explanation of benefits to file with its request for medical dispute resolution. Additionally, the MRD considered TPCIGA's untimely response to the extent that it claimed that additional reimbursement had been made and ordered TPCIGA to provide reimbursement in the amount of \$58,584.17 .

TPCIGA is a nonprofit, unincorporated legal entity which has the responsibility of discharging the obligations of impaired insurers. As such, TPCIGA argued that in performing its duties, it does not assume or succeed to any liabilities of an impaired insurer, and shall not be considered to otherwise stand in the shoes of the impaired insurer for any purpose.<sup>2</sup> TPCIGA further argued that TWCC Rule 133.307(j)(2) does not prevent it from raising new claims and defenses.

The MRD was unable to consider an explanation of benefits because neither Petosurance nor TPCIGA furnished any to the Provider prior to its filing for dispute resolution. The MRD stated that without an explanation of benefits to review, the dispute would be decided as fee, and then gave TPCIGA additional credit for payment.

The ALJ concludes that the application of TWCC Rule 133.307(j)(2) prevents TPCIGA from now raising defenses not previously raised in an explanation of benefits filed prior to the request for medical dispute resolution. Nothing in either the TWCC rules or the Insurance Code exempts TPCIGA from the application of TWCC rules and the Labor Code. Additionally, the enabling legislation which created TPCIGA did not specifically exempt it from TWCC rules and the Labor Code, and there is no authority cited in support of TPCIGA's contention that the language in TEX. INS. CODE ANN. art. 21.28-c, § 8(b) should be interpreted as argued.

The ALJ finds that TPCIGA cannot raise defenses or claims not asserted in an explanation of benefits furnished to the Provider prior to its filing a request for medical dispute resolution. The ALJ orders TPCIGA to reimburse the Provider in the amount of \$58,584.17 as set forth in the MRD decision.

## **II. FINDINGS OF FACT**

1. On \_\_\_\_, the Claimant suffered a compensable injury to his back.
2. The Claimant's injury is covered by workers' compensation insurance written for the Claimant's employer by Petosurance Casualty Company (Petosurance).
3. The Claimant was treated for the compensable injury at Vista Medical Center Hospital (Provider) in September 2001.
4. The Provider billed Petosurance for the services referred to in Finding No. 3 in November 2001.

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<sup>2</sup> TEX. INS. CODE ANN. art. 21.28-c, § 8(b).

5. On December 24, 2001, Petrosurance made a partial payment to the Provider, but failed to include an explanation of benefits.
6. Petrosurance was placed in receivership on March 15, 2002, and the Texas Property and Casualty Insurance Guaranty Association (TPCIGA) began administering Petrosurance's claims.
7. On July 23, 2002, the Provider filed a request for reconsideration, which was received by TPCIGA on July 29, 2002.
8. TPCIGA did not respond to the request for reconsideration with either additional payment or an explanation of benefits.
9. On August 29, 2002, the Provider timely requested dispute resolution by the Medical Review Division of the Texas Workers' Compensation Commission (Commission).
10. On November 22, 2002, the Commission's Medical Review Division issued its Findings and Decision ordering TPCIGA to reimburse the Provider \$58,584.17 for the treatment referred to in Finding of Fact No. 3.
11. On December 10, 2002, TPCIGA filed a request for hearing to contest the order for reimbursement referred to in Finding of Fact No. 10.
12. The Commission sent notice of the hearing to the parties on January 10, 2003. The hearing notice informed the parties of the matter to be determined, the right to appear and be represented by counsel, the time and place of the hearing, and the statutes and rules involved.
13. The ALJ convened a hearing on June 3, 2003. TPCIGA was represented by David L. Swanson, attorney. The Provider was represented by Christina L. Gutel, attorney. The evidentiary record closed at the conclusion of the hearing that day. The record of the hearing closed on August 8, 2003, with the filing of responses to closing briefs by both parties.

### **III. CONCLUSIONS OF LAW**

1. The Texas Workers' Compensation Commission (Commission) has jurisdiction to decide the issues presented pursuant to TEX. LAB. CODE ANN. § 413.031.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a Decision and Order, pursuant to TEX. LAB. CODE ANN. § 413.031 and TEX. GOV'T CODE ch. 2003.
3. The Notice of Hearing issued by the Commission conformed to the requirements of TEX. GOV'T CODE §2001.052 in that it 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 section of the statutes and rules involved; and a short plain statement of the matters asserted.

4. TPCIGA is a nonprofit, unincorporated legal entity which has the responsibility of discharging the obligations of impaired insurers and paying covered claims. TEX. INS. CODE ANN. art. 21.28-c, §§ 6, 8(a) and 8(b).
5. A response by a carrier to a request for dispute resolution filed by a health care provider shall only address those denial reasons presented to a provider prior to the filing date of the request for medical dispute resolution, and any new denial reasons will not be considered in the review. 28 TEX. ADMIN. CODE § 133.307(j)(2).
6. Based on Findings of Fact Nos. 1 - 9 and Conclusions of Law Nos. 4 and 5, TPCIGA for Petrosurance Casualty Company is required to reimburse the Provider.

### **ORDER**

IT IS, THEREFORE, ORDERED that TPCIGA for Petrosurance Casualty Company shall reimburse Vista Medical Center Hospital fees incurred in treating the Claimant in the amount of \$58,584.17.

**ISSUED this 6th day of October, 2003.**

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**MICHAEL J. BORKLAND**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**