

No. **2023-8072**

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

Date: 7/6/2023

Subject Considered:

Phoenix Insurance Company
PO Box 163201
Austin, Texas 78716-3201

Consent Order
DWC Enforcement File Nos. 31594 & 32022

General remarks and official action taken:

This is a consent order with Phoenix 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 2007, 2009, 2014, 2016, 2018, and 2020 Performance Based Oversight (PBO) assessments. Respondent was classified as "high" tier in the 2022 PBO assessments. Respondent was not selected to be tiered in the 2010 or 2012 PBO assessments.

Failure to Timely Act on a Medical Bill

File No. 31594

3. On [REDACTED] a designated doctor (DD) performed a DD examination on an injured employee.
4. On [REDACTED] Respondent received a completed medical bill for [REDACTED] from the DD.
5. Respondent was required to act on the bill within 45 days of receiving it. The deadline to act was [REDACTED]
6. On [REDACTED] Respondent paid [REDACTED] to the DD, which was 362 days late.

File No. 32022

7. On [REDACTED] a health care provider (HCP) provided medical services to an injured employee.
8. On [REDACTED] Respondent received a completed medical bill for [REDACTED] from the HCP.
9. Respondent was required to act on the bill within 45 days of receiving it. The deadline to act was [REDACTED]
10. On [REDACTED] Respondent issued an "explanation of reimbursement" denying payment of the medical bill, which was 140 days late.
11. On [REDACTED] Respondent paid the medical bill, including interest, in the amount of [REDACTED]

Assessment of Sanction

1. Failure to pay health benefits in a timely and cost-effective manner is harmful to injured employees and the Texas workers' compensation system. Prompt payment of medical bills is imperative to DWC's goal of ensuring that injured employees have access to prompt, high-quality medical care.

2. 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.
3. 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, including the nature, circumstances, consequences, extent, and gravity of the prohibited act; the penalty necessary to deter future violations; and other matters that justice may require, including evidence of heightened awareness of the legal duty to comply with the Act and DWC rules. Further, the late medical bill payment was more than 360 days late and involved DD services, which do not require preauthorization and are essential to the Texas workers' compensation system.
4. DWC is aware of no mitigating factors pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e).
5. 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).

6. 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), an insurance carrier or its representative commits an administrative violation each time it violates a DWC rule.
6. 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.
7. 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.
8. Respondent violated Tex. Lab. Code §§ 408.027; 415.002(a)(20); 415.002(a)(22); and 28 Tex. Admin. Code § 133.240 each time Respondent failed to pay, reduce, deny, or determine to audit a completed medical bill within 45 days of receiving the bill.

Order

It is ordered that Phoenix Insurance Company must pay an administrative penalty of \$2,000 within 30 days from the date of this order. Phoenix 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, P.O. Box 12030, Austin, Texas 78711-2030.



Jeff Nelson
Commissioner
TDI, Division of Workers' Compensation

Approved Form and Content:



Austin Southerland
Staff Attorney, Enforcement
Compliance and Investigations
TDI, Division of Workers' Compensation

Commissioner's Order
Phoenix Insurance Company
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Unsworn Declaration

STATE OF TEXAS

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COUNTY OF DALLAS

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Pursuant to the Tex Civ Prac and Rem Code § 132.001(a), (b), and (d), my name is ALAN WICKMAN I hold the position of VICE PRESIDENT and am the authorized representative of Phoenix Insurance Company My business address is 1301 E. COLLINS BLVD. RICHARDSON, DALLAS, TX, 75081
(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 6/6, 2023