

No. **2022-7463**

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

Date: 8/26/2022

Subject Considered:

New Hampshire Insurance Company
1271 Avenue of the Americas, Floor 37
New York, New York 10020-1303

Consent Order
DWC Enforcement File Nos. 24150 and 24284

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 "poor" tier in the 2007 Performance Based Oversight (PBO) assessments. Respondent was classified as "average" tier in the 2009, 2010, 2012, 2014, 2016, 2018, and 2020 PBO assessments.

Failure to Timely and Accurately Pay Accrued Impairment Income Benefits

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3. On [REDACTED] the certifying doctor found that the injured employee reached Maximum Medical Improvement (MMI) with an Impairment Rating (IR) of [REDACTED]
4. On [REDACTED] Respondent received the DWC Form-069, *Report of Medical Evaluation* (DWC-69) and narrative report (certifying report) from the certifying doctor, who was an authorized doctor selected by the injured employee's treating doctor for purposes of addressing the issues of MMI and IR.
5. Respondent was required to dispute or pay accrued impairment income benefits (IIBs) no later than five days after receiving the DWC-069 and narrative report, or by [REDACTED]
6. On [REDACTED] Respondent disputed the date of MMI and IR by requesting a Designated Doctor (DD) exam, which was 23 days late.
7. On [REDACTED] Respondent initiated payment for IIBs based on the DD report.

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8. On [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.
9. On [REDACTED] Respondent fully paid the required attorney fees to the injured employee's attorney. However, Respondent continued to deduct attorney fees from the injured employee's income benefits, resulting in an underpayment of IIBs as follows:

	Benefit Period	Underpayment or Improper IIBs Deduction
a.	[REDACTED]	[REDACTED]
b.	[REDACTED]	[REDACTED]
c.	[REDACTED]	[REDACTED]
d.	[REDACTED]	[REDACTED]
e.	[REDACTED]	[REDACTED]
f.	[REDACTED]	[REDACTED]
g.	[REDACTED]	[REDACTED]
h.	[REDACTED]	[REDACTED]
i.	[REDACTED]	[REDACTED]
j.	[REDACTED]	[REDACTED]
k.	[REDACTED]	[REDACTED]
l.	[REDACTED]	[REDACTED]
m.	[REDACTED]	[REDACTED]
n.	[REDACTED]	[REDACTED]
o.	[REDACTED]	[REDACTED]
p.	[REDACTED]	[REDACTED]
q.	[REDACTED]	[REDACTED]

10. Between [REDACTED] and [REDACTED] Respondent miscalculated the IIBs rate and improperly deducted attorney fees from the injured employee's benefits. Respondent was required to pay IIBs to the injured employee based on a reasonable assessment of the correct rate.

¹ Beginning [REDACTED] a child support lien was placed on the injured employee's benefits, reducing the benefit amount and Respondent's calculation of the attorney fees as well.

11. On [REDACTED] Respondent issued a lump sum payment, plus interest, to the injured employee in the amount of [REDACTED]

Assessment of Sanction

1. Failure to provide income benefits in a timely and cost-effective manner is harmful to injured employees and the Texas workers' compensation system.
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 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.

4. DWC found the following factors in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e) to be mitigating: the violator's demonstration of good faith, including actions it took to rectify the consequences of the prohibited act.
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

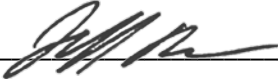
1. The commissioner has jurisdiction over this matter pursuant to Tex. Lab. Code §§ 402.001, 402.00114, 402.00116, 402.00128, 414.002, and 414.003.
2. The commissioner has the authority to dispose of this case informally pursuant to Tex. Gov't Code § 2001.056, Tex. Lab. Code §§ 401.021 and 402.00128(b)(6)-(7), 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 the Texas Workers' Compensation Act or a DWC rule.
6. Pursuant to Tex. Lab. Code §§ 408.081, 408.126, 409.023, and 415.002(a)(16), an insurance carrier must pay benefits weekly, as and when the benefits accrue, without order from the commissioner.

7. Pursuant to Tex. Lab. Code § 408.121(a-c), the insurance carrier shall initiate IIBs not later than the fifth day after the date on which the insurance carrier receives the doctor's report certifying MMI and if the insurance carrier disputes the IR used under Subsection (a), the carrier shall pay the employee IIBs for a period based on the carrier's reasonable assessment of the correct rating.
8. Pursuant to 28 Tex. Admin. Code § 127.10(h), an insurance carrier must pay all benefits in accordance with the medical report for the issues in dispute no later than five days after receiving the report.
9. Pursuant to 28 Tex. Admin. Code § 130.8, an insurance carrier shall initiate or dispute IIBs within five days of receipt of certifying report by the injured employee's treating doctor.
10. Respondent violated Tex. Lab. Code §§ 408.081, 408.121, 408.126, 409.023 and 415.002(a)(16), (20), and (22) by failing to timely or accurately dispute or pay accrued IIBs.

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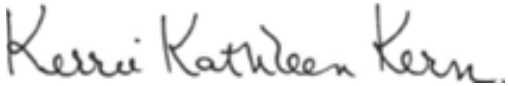
Order

It is ordered that New Hampshire Insurance Company must pay an administrative penalty of \$12,000 within 30 days from the date of this order. New Hampshire Insurance Company must pay the administrative penalty by 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:



Kathleen Kern
Staff Attorney, Enforcement
Compliance and Investigations
TDI, Division of Workers' Compensation

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Unsworn Declaration

STATE OF Connecticut

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COUNTY OF Hartford

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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.

DocuSigned by:
Peter Macdonald
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Declarant

Executed on August 12, 2022.

Confidential Information Redacted
Texas Labor Code §§402.083 and 402.092