

No. **2023-8387**

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

**Date: 12/8/2023**

**Subject Considered:**

Norguard Insurance Company  
16 South River Street  
Wilkes-Barre, Pennsylvania 18703

Consent Order  
DWC Enforcement File Nos. 29818, 30017, and 30018

**General remarks and official action taken:**

This is a consent order with Norguard 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 workers' compensation/employers' liability insurance in Texas.
2. Respondent was classified as "average" tier in the 2020 and 2022 Performance Based Oversight (PBO) assessments. Respondent was not selected to be tiered in any other PBO assessments.

DWC Audit No. IBA-22-118

*File No. 29818*

3. On [REDACTED], DWC initiated DWC Audit No. IBA-22-118 to determine whether Respondent complied with the Texas Labor Code and related rules on the timely payment of lifetime income benefits (LIBs) and death benefits, as well as timely submitting claim data to DWC.
4. The audit examined death benefit payments that Respondent reported issuing between [REDACTED], and [REDACTED]. DWC identified three initial death benefit claims for audit. No initial death benefit claims failed to meet selection criteria and were dropped from the audit sample. All three claims were reviewed to determine Respondent's compliance.
5. The audit focused on the accuracy of Respondent's payment of death benefits, as well as timely submitting claim data to DWC. The electronic data interchange (EDI) portion of the audit focused on timely reporting death benefit terminations.

Failure to Timely Pay Accurate Death Benefits

6. Respondent failed to timely pay accurate death benefits for 33.33% of examined payments (1 out of 3).
7. Specifically, Respondent underpaid death benefits in the amount of \$ [REDACTED] over 189 weeks to beneficiaries in one instance. This is the same claim found in Enforcement File Nos. 30017 and 30018.
8. Respondent used an incorrect calculation of the Average Weekly Wage to pay death benefits, resulting in the underpayment.

Failure to Timely Report Claim Data to DWC

9. Respondent failed to timely report the total number of death benefit terminations for 100% of examined payments (1 out of 1).
10. Specifically, Respondent failed to timely report the true death benefit terminations of examined payments in one instance.

Failure to Submit a Settlement to DWC for Approval

*File No. 30017*

11. On [REDACTED], Respondent sent notice to DWC of a fatality in connection with a workers' compensation claim.
12. On [REDACTED], and Administrative Law Judge (ALJ) issued a Contested Case Hearing Decision & Order (CCH D&O) that found the injured employee's widow and two minor children (Spouse, Child 1, and Child 2) are the legal beneficiaries of the deceased injured employee and entitled to death benefits.
13. Respondent appealed the CCH D&O seeking review that Spouse was a legal beneficiary of the injured employee entitled to death benefits. Respondent did not seek review of the finding that Child 1 and Child 2 were legal beneficiaries entitled to death benefits.
14. On [REDACTED], the Appeals Panel issued a letter stating that the [REDACTED], CCH D&O was final, and the CCH D&O was the Appeals Panel's decision.
15. In [REDACTED], Respondent filed an original petition in county district court seeking judicial review of the sufficiency of Spouse's marriage certificate and status and whether Spouse was a proper legal beneficiary entitled to death benefits.
16. Respondent and Spouse's attorneys signed an agreement regarding Spouse's legal beneficiary status in the death benefit claim. Spouse agreed not to challenge judicial review of Spouse's legal beneficiary status. The agreement also limited payment of death benefits to Spouse for two years. The agreement did not address death benefits for Child 1 and Child 2. Spouse never signed the agreement.
17. Respondent had a duty to file any agreement with DWC not later than the 30th day before the date on which the court was scheduled to enter the judgment or approve the settlement. However, Respondent failed to submit the agreement to DWC for review prior to the final judgment.

18. On [REDACTED], Respondent sent DWC a copy of Respondent's motion for default judgment in the case. The default motion did not mention the earlier agreement nor any details of the agreement.
19. On [REDACTED], the presiding judge issued an order finding that Spouse was not a legal beneficiary and not entitled to death benefits. The order did not address Child 1 or Child 2.

Failure to Timely Report a Claim Action to the Beneficiary and DWC

*File No. 30018*

20. On [REDACTED], Respondent made the last death benefits payment to Spouse, Child 1, and Child 2 in connection with the agreement in Enforcement File No. 30017. Respondent was required to notify all beneficiaries and DWC of a suspension of death benefits within 10 days of making the death benefits payment. In this case, the latest date was [REDACTED].
21. On [REDACTED], Respondent sent notice to DWC of the suspension of death benefits 910 days late.
22. On [REDACTED], Respondent sent a plain language notice to the beneficiaries informing the beneficiaries of the suspension of death benefits 1,037 days late.

**Assessment of Sanction**

1. Failure to provide death benefits in a timely and cost-effective manner is harmful to beneficiaries and the Texas workers' compensation system.
2. Failure to provide DWC notice of proposed settlements prevents DWC review of proposed settlements and hinders DWC's ability to intervene, if necessary, to protect beneficiaries.
3. DWC relies on claims information insurance carriers submit for many purposes, including, but not limited to, providing required information and reports to the Legislature, ensuring that insurance carriers comply with the Texas Labor Code and DWC rules, and detecting patterns and practices in actions insurance carriers take on claims.

4. 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 or their beneficiaries;
  - the history of compliance with EDI 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.
5. 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; whether the administrative violation had a negative impact on the delivery of benefits to an injured employee or their beneficiaries; to the extent reasonable, the economic benefit resulting from the prohibited act; and other matters that justice may require, including, but not limited to evidence of heightened awareness of the legal duty to comply with the Texas Workers' Compensation Act and DWC rules.
6. DWC is aware of the mitigating factor pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e): Respondent's payment of death benefits after the reopening of judicial review of the widow's status as a beneficiary.

7. 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).
8. 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, 409.021, 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 § 415.025, a reference in this code or other law, or in rules of the former Texas Workers' Compensation Commission or the commissioner, to a particular class of violation, administrative violation, or penalty shall be construed as a reference to an administrative penalty. An administrative penalty may not exceed \$25,000 per day per occurrence. Each day of noncompliance constitutes a separate violation.
6. 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 Accurate Death Benefits

7. Pursuant to Tex. Lab. Code § 408.061(d), a weekly death benefit may not exceed 100% of the state average weekly wage rounded to the nearest whole dollar.
8. Pursuant to Tex. Lab. Code § 408.181(a) and (b), an insurance carrier must pay accurate death benefits to a legal beneficiary. The amount of a death benefit is equal to 75% of the employee's average weekly wage.
9. Pursuant to Tex. Lab. Code § 409.021 and 28 Tex. Admin. Code §§ 124.3 and 124.7, an insurance carrier is required to initiate payment of death benefits no later than the 15th day after it receives written notice of the injury or the seventh day after the accrual date. It must also notify DWC in writing of its initiation of income or death benefit payments in the manner DWC rules prescribe.
10. Pursuant to 28 Tex. Admin. Code § 124.2(e)(4)-(6), the insurance carrier must notify DWC and the claimant of any changes, resumptions, or terminations involving death benefits.
11. Pursuant to 28 Tex. Admin. Code § 132.17(f), an insurance carrier must initiate payment of death benefits to eligible claimants. If the insurance carrier believes a claimant is not eligible, it must file a notice of dispute of eligibility in the form and manner DWC prescribes.
12. Respondent violated Tex. Lab. Code §§ 408.181; 409.021; 415.002(a)(16), (20), and (22); and 28 Tex. Admin. Code §§ 124.3, 124.7, and 132.17 each time Respondent failed to timely pay accurate death benefits.

Failure to Submit a Settlement to DWC for Approval

13. Pursuant to Tex. Lab. Code § 408.005(d), a settlement must be signed by the commissioner and all parties to the dispute.
14. Pursuant to Tex. Lab. Code § 408.005(g), a settlement takes effect on the date it is approved by the commissioner.
15. Pursuant to Tex. Lab. Code § 410.258(a), the party who initiated a proceeding under this subchapter or Subchapter G must file any proposed judgment or settlement,

including a proposed default judgment or proposed agreed judgment, with DWC not later than the 30th day before the date on which the court is scheduled to enter the judgment or approve the settlement.

16. Pursuant to Tex. Lab. Code § 410.258(a) (eff. Sept. 1, 2005, to Aug. 31, 2017), the party who initiated a proceeding under this subchapter or Subchapter G must file any proposed judgment or settlement made by the parties to the proceeding, including a proposed default judgment, with DWC not later than the 30th day before the date on which the court is scheduled to enter the judgment or approve the settlement.
17. Pursuant to Tex. Lab. Code § 415.0035(a)(1), an insurance carrier or its representative commits an administrative violation if that person fails to submit to DWC a settlement or agreement of the parties.
18. Pursuant to 28 Tex. Admin. Code § 147.4(b) and 147.5(b), a written agreement or settlement reached after a benefit proceeding has been scheduled, whether before, during, or after the benefit proceeding has been held, must be sent to DWC.
19. Pursuant to 28 Tex. Admin. Code § 147.11(a), the party who requested judicial review under Chapter 410, Subchapter F or G shall file a copy of any proposed judgment or settlement with DWC not later than the 30th day before the date on which the court is scheduled to enter the judgment or approve the settlement. A proposed judgment or settlement must be sent by certified mail.
20. Respondent violated Tex. Lab. Code §§ 408.005; 410.258; 415.002(a)(20) and (22); 415.0035(a)(1); and 28 Tex. Admin. Code §§ 147.11(a), 147.4(b), and 147.5(b) by failing to submit a settlement/agreement between the parties to DWC for approval.

#### Failure to Timely Report a Claim Action to DWC


21. Pursuant to 28 Tex. Admin. Code § 124.2(e), an insurance carrier shall notify DWC and the beneficiary of termination or suspension of death benefits within 10 days of making the last payment for the benefits.
22. Respondent violated Tex. Lab. Code § 415.002(a)(20) and 28 Tex. Admin. Code § 124.2(e) by failing to timely notify DWC and the beneficiaries of the suspension of death benefits.




**Order**

It is ordered that Norguard Insurance Company must pay an administrative penalty of \$20,000 within 30 days from the Commissioner signs the order.

After receiving an invoice, Norguard 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.

  
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Jeff Nelson  
Commissioner  
TDI, Division of Workers' Compensation

Approved Form and Content:

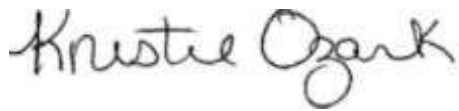
  
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Tyrus Housh  
Staff Attorney, Enforcement  
Compliance and Investigations  
TDI, Division of Workers' Compensation

**Unsworn Declaration**

**STATE OF PENNSYLVANIA** §  
§  
**COUNTY OF LUZERNE** §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is Kristie Ozark. I hold the position of Claims Supervisor and am the authorized representative of Norguard Insurance Company. My business address is: PO Box 1368, Wilkes Barre, Luzerne, PA, 18703.  
(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 9, 2023.