

No. 2019 6164

Confidential Information Redacted  
Texas Labor Code §§402.083 & 402.092

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

Date: NOV 26 2019

**Subject Considered:**

**NORGUARD INSURANCE COMPANY**  
39 Public Square  
P.O. Box A-H  
Wilkes-Barre, Pennsylvania 18703-0020

**CONSENT ORDER**  
**TDI-DWC ENFORCEMENT FILE NO. 22419**

**General remarks and official action taken:**

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

**WAIVER**

Norguard acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Norguard 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. Norguard 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 types of insurance including workers' compensation/employers' liability insurance in the state of Texas.
2. Norguard was not selected to be tiered in the 2007, 2009, 2010, 2012, 2014, 2016, or 2018 Performance Based Oversight (PBO) assessments.

**FAILURE TO PAY ACCRUED INCOME BENEFITS BASED ON A DESIGNATED DOCTOR REPORT**

3. On [REDACTED], Norguard received a report from a designated doctor (DD) in connection with a DD examination.
4. The DD determined that the injured employee was not at maximum medical improvement and that the length of the injured employee's disability ranged from [REDACTED], to [REDACTED], and was a [REDACTED].
5. Since disability and return to work were issues in dispute, Norguard was required to pay accrued income benefits no later than five days after receiving the DD report, or by [REDACTED].
6. Norguard issued payment of income benefits on [REDACTED], which was 77 days late. In addition, Norguard issued an interest payment on [REDACTED].

**ASSESSMENT OF SANCTIONS**

7. Failure to pay appropriate income benefits in a manner that is timely and cost effective is harmful to the injured employee and the Texas workers' compensation system.
8. In assessing the sanction for this case, the Texas Department of Insurance, Division of Workers' Compensation (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, 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 has negative impact on the delivery of benefits to an injured employee.

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, as the insurance carrier has initiated additional training and procedures to ensure the error does not occur, and the error was corrected immediately when discovered.
11. Norguard acknowledges that DWC and Norguard have communicated 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. Norguard 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)(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.
5. 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.
6. Pursuant to TEX. LAB. CODE § 415.002(a)(20), an insurance carrier or its representative commits an administrative violation each time it violates a commissioner rule.
7. Pursuant to TEX. LAB. CODE § 408.0041(f), an insurance carrier shall pay benefits based on the opinion of the DD during the pendency of any dispute.
8. Pursuant to 28 TEX. ADMIN. CODE § 127.10(h), the insurance carrier shall pay all benefits in accordance with the DD's report for the issues in dispute no later than five days after receipt of the report.

9. Norguard violated TEX. LAB. CODE §§ 415.002(a)(22), 415.002(a)(16), 415.002(a)(20), 408.081, and 409.023, and 28 TEX. ADMIN. CODE § 127.10(h) when it failed to timely pay accrued income benefits in accordance with the DD's report later than five days after receipt of the report.

**ORDER**

Norguard Insurance Company is ORDERED to pay an administrative penalty of \$3,500 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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Amy Norman  
Staff Attorney, DWC Enforcement  
Compliance & Investigations  
Division of Workers' Compensation  
Texas Department of Insurance

