

No. 2020-6334

Confidential Information Redacted  
Texas Labor Code §§402.083 & 402.092

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

**Date:** 04-29-2020

**Subject Considered:**

**NEW HAMPSHIRE INSURANCE COMPANY**  
175 Water Street, 18th Floor  
New York City, New York 10038

**CONSENT ORDER**  
TDI-DWC ENFORCEMENT FILE NO. 23513

**General remarks and official action taken:**

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

**WAIVER**

New Hampshire acknowledges that the Texas Labor Code and other applicable laws provide certain rights. New Hampshire 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. New Hampshire 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, including workers' compensation/employers' liability insurance in the state of Texas.
2. New Hampshire was classified as "poor" tier in the 2007 Performance Based Oversight (PBO) assessment. New Hampshire was classified as "average" tier in the 2009, 2010, 2012, 2014, 2016, and 2018 PBO assessments.

**FAILURE TO TIMELY INITIATE PAYMENT OF**

- [REDACTED]
3. On [REDACTED], New Hampshire received notice of an injury to an injured employee.
  4. The first day of disability for the injured employee was on [REDACTED], and the eighth day accrued on [REDACTED].
  5. New Hampshire was required to initiate or dispute [REDACTED] no later than the 15th day after the date on which the insurance carrier received written notice of the injury, or the seventh day after the accrual date, unless New Hampshire had notified the Texas Department of Insurance, Division of Workers' Compensation (DWC) and the injured employee in writing of its refusal to pay, which, in this case, was [REDACTED].
  6. New Hampshire did not dispute the claim. New Hampshire issued the initial [REDACTED] payment 31 days late on [REDACTED].

#### ASSESSMENT OF SANCTION

7. Failure to provide appropriate TIBs in a manner that is timely and cost-effective is harmful to injured employees and to the Texas workers' compensation system.
8. In assessing the sanction for this case, 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 a 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: evidence of heightened awareness of the legal duty to comply with the Texas Workers' Compensation Act and DWC rules, as the insurance carrier relied on the injured employee and the employer for notice that the injured employee was missing work. Neither the injured employee nor the employer informed the insurance carrier that the injured employee was missing work. As soon as it was made aware of the injured employee's accrued missed dates, the insurance carrier properly disputed the doctor's findings and paid the TIBs owed.
11. New Hampshire acknowledges that DWC and New Hampshire 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. New Hampshire 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, and 402.00128.
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)(20), an insurance carrier or its representative commits an administrative violation each time it violates a DWC rule.
5. 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.
6. Pursuant to TEX. LAB. CODE §§ 408.081, 408.082, and 409.021, and 28 TEX. ADMIN. CODE §§ 124.3 and 124.7, insurance carriers are required to initiate payment of TIBs not later than the 15th day after the date on which the insurance carrier receives written notice of

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 New Hampshire Insurance Company  
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the injury, or the seventh day after the accrual date, unless the insurance carrier has notified DWC and the injured employee in writing of its refusal to pay.

7. New Hampshire violated TEX. LAB. CODE §§ 415.002(a)(20), 415.002(a)(22), and 409.021 when it failed to timely initiate payment of TIBs.

**ORDER**

New Hampshire Insurance Company is ORDERED to pay an administrative penalty of \$6,000 within 30 days from the date of this consent 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

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**AFFIDAVIT**

STATE OF Connecticut           §  
   §  
COUNTY OF Hartford           §

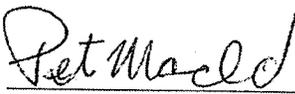
Before me, the undersigned authority, personally appeared the affiant, who being by me duly sworn, deposed as follows:

“My name is Peter Macdonald. I am of sound mind, capable of making this statement, and have personal knowledge of these facts which are true and correct.

I hold the office of Vice President, and am the authorized representative of New Hampshire Insurance Company. I am duly authorized by said organization to execute this statement.

New Hampshire Insurance Company waives rights provided by the Texas Labor Code and other applicable laws, and acknowledges the jurisdiction of the Texas commissioner of workers' compensation.

New Hampshire Insurance Company is voluntarily entering into this consent order. New Hampshire Insurance Company consents to the issuance and service of this consent order.”

  
Affiant

SWORN TO AND SUBSCRIBED before me on \_\_\_\_\_, 2020.

(NOTARY SEAL)

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Printed Name of Notary Public

\_\_\_\_\_  
Commission Expiration Date