

No. 2020-6613

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

**Date:** 12-16-2020

**Subject Considered:**

Texas Mutual Insurance Company  
6210 East Highway 290  
Austin, Texas 78723-1026

Consent Order  
DWC Enforcement File Nos. 17295 and 17906

**General remarks and official action taken:**

This is a consent order with Texas Mutual Insurance Company (TMIC). The commissioner of the Texas Department of Insurance, Division of Workers' Compensation (DWC) considers whether DWC should take disciplinary action against TMIC.

**Waiver**

TMIC acknowledges that the Texas Labor Code and other applicable laws provide certain rights. TMIC 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. TMIC 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. TMIC was classified as "average" tier in the 2007 Performance Based Oversight (PBO) assessment. TMIC was classified as "high" tier in the 2009, 2010, 2012, 2014, and 2016 PBO assessments.

#### Failure to Pay Impairment Income Benefits Based on a Designated Doctor Report (#17906)

3. On [REDACTED], TMIC received a report from a designated doctor (DD) in connection with a DD examination.
4. The DD determined the injured employee reached maximum medical improvement on [REDACTED], and assigned an impairment rating of 16%.
5. TMIC was required to pay accrued impairment income benefits (IIBs) no later than five days after receiving the DD's report. The deadline to pay IIBs was [REDACTED].
6. TMIC issued the final IIBs payment with interest on [REDACTED], which was 143 days late.

#### Unauthorized Contact with a Designated Doctor (#17295)

7. On [REDACTED], DWC ordered the injured employee to attend a DD examination on [REDACTED].
8. On [REDACTED], TMIC faxed the DD a copy of an [REDACTED], contested case hearing decision and order (CCH D&O) with a note to "please include the CCH D&O with the medical records for the DD exam on [REDACTED]."
9. On [REDACTED], TMIC faxed the DD a copy of a [REDACTED], email between the injured employee and an adjuster with a note to "please include the email correspondence with the medical records for the DD exam on [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. Attempts to exert undue influence on a DD affect the injured employee's right to a fair and accessible dispute resolution process.

3. 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.
4. 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; 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; and other matters that justice may require, including the size of the company or practice.
5. 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, as there was confusion caused by the multiple delays while disputing and clarifying the DD exams in Case No. 17906. After the confusion was resolved in the CCH D&O,

however, the insurance carrier paid promptly. In Case No. 17295, there was confusion in defining the phrase "supporting documents" from Rule 127.10(a)(2).

6. TMIC acknowledges it communicated with DWC about the relevant statutes and rules it violated; the facts establish that the administrative violation occurred; and 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).
7. TMIC 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, and 414.002.
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)(7), and 28 TEX. ADMIN. CODE § 180.26(h).
3. TMIC 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 § 408.0041(f), an insurance carrier must pay benefits based on the opinion of the DD during any pending dispute.

8. Pursuant to TEX. LAB. CODE §§ 408.081, 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.
9. Pursuant to 28 TEX. ADMIN. CODE § 127.10(h), an insurance carrier must pay all benefits in accordance with the DD's report for the issues in dispute no later than five days after receiving the report.
10. TMIC violated TEX. LAB. CODE §§ 408.0041(f); 408.081; 409.023; 415.002(a)(16), (20), and (22); and 28 TEX. ADMIN. CODE § 127.10(h) when it failed to timely pay accrued income benefits in accordance with the DD's report no later than five days after receiving the report.
11. Pursuant to 28 TEX. ADMIN. CODE § 127.10, the designated doctor is authorized to receive the injured employee's confidential medical records and analyses of the injured employee's medical condition, functional abilities, and return-to-work opportunities to assist in the resolution of a dispute under this subchapter without a signed release from the injured employee and the insurance carrier is allowed to send the DD an analysis of the injured employee's medical condition, functional abilities, and return-to-work opportunities.
12. Pursuant to 28 TEX. ADMIN. CODE § 127.15(a), only the injured employee or appropriate DWC staff may communicate with the DD about the injured employee's medical condition or history before the DD examines the injured employee.
13. TMIC violated TEX. LAB. CODE § 415.002(a)(20) and 28 TEX. ADMIN. CODE §§ 127.10 and 127.15(a) each time it sent materials to the DD that went beyond the injured employee's medical condition, functional abilities, and return-to-work opportunities.

Confidential Information Redacted  
Texas Labor Code §§402.083 and 402.092

### Order

It is ordered that Texas Mutual Insurance Company must pay an administrative penalty of \$8,000 within 30 days from the date of this order. Texas Mutual Insurance Company must pay the administrative penalty by 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 9999, P.O. Box 149104, Austin, Texas 78714-9104.



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Cassie Brown  
Commissioner of Workers' Compensation

Approved Form and Content:



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Amy Norman  
Staff Attorney, Enforcement  
Compliance and Investigations  
Division of Workers' Compensation

Confidential Information Redacted Texas Labor Code §§402.083 and 402.092
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I hold the office of VP of CLAIM OPERATIONS and am the authorized representative of Texas Mutual Insurance Company. I am duly authorized by said organization to execute this statement.

Texas Mutual 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.

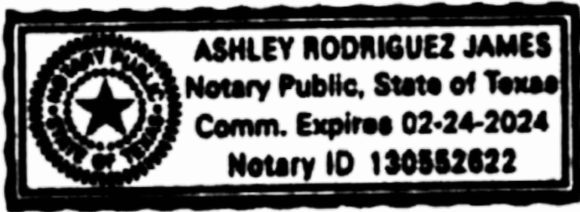
Texas Mutual Insurance Company is voluntarily entering into this consent order. Texas Mutual Insurance Company consents to the issuance and service of this consent order."



Affiant

SWORN TO AND SUBSCRIBED before me on November 18, 2020.

(NOTARY SEAL)



Signature of Notary Public

Ashley R. James

Printed Name of Notary Public

02/24/2024

Commission Expiration Date

Confidential Information Redacted  
Texas Labor Code §§402.083 and 402.092