

No. **2021-7054**

Confidential Information Redacted
Texas Labor Code §§402.083 and 402.092

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

Date: 11/4/2021

Subject Considered:

Praetorian Insurance Company
One QBE Way
Sun Prairie, Wisconsin 53596

Consent Order
DWC Enforcement File No. 27322

General remarks and official action taken:

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

Waiver

Praetorian Insurance acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Praetorian Insurance 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. Praetorian Insurance 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. Praetorian Insurance was classified as "average" tier in the 2014 Performance Based Oversight (PBO) assessment. Praetorian Insurance was not selected to be tiered in the 2007, 2009, 2010, 2012, 2016, 2018, or 2020 PBO assessments.

DWC Audit No. IBA-21-115

3. On [REDACTED] DWC initiated DWC Audit No. IBA-21-115 to determine whether Praetorian Insurance complied with the Texas Labor Code and related rules on the timely payment of lifetime income benefits (LIBs) and death benefits (DBs), as well as timely submitting claim data to DWC.
4. The audit examined DB payments that Praetorian Insurance reported issuing between [REDACTED] and [REDACTED] DWC identified 13 initial DB claims for audit. A total of 11 initial DB claims failed to meet selection criteria and were dropped from the audit sample. The remaining two claims were reviewed to determine Praetorian Insurance's compliance.
5. The audit focused on the accuracy of Praetorian Insurance's payment of DBs, as well as timely submitting claim data to DWC. The electronic data interchange (EDI) portion of the audit focused on timely reporting DB terminations.

Failure to Timely Pay Accurate DBs

6. Praetorian Insurance failed to timely pay accurate DBs for 50% of examined payments (one out of two).
7. Specifically, Praetorian Insurance underpaid DBs to beneficiaries over a period of 348 weeks late in one instance. On [REDACTED] Praetorian Insurance issued to beneficiaries the combined underpayment plus interest of [REDACTED]. On the same day, Praetorian Insurance issued payment to the Subsequent Injury Fund in the amount of [REDACTED].

Failure to Accurately Report Claim Data to DWC

8. Praetorian Insurance failed to accurately report data to DWC which caused eleven claims to be erroneously selected for audit. Subsequently, these claims had to be dropped from the audit for failure to meet selection criteria (11 out of 13).

Assessment of Sanction

1. Failure to provide DBs in a timely and cost-effective manner is harmful to injured employees, their beneficiaries, and the Texas workers' compensation system.
2. 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.
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 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.
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 or their beneficiaries; the history of compliance with EDI 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: Praetorian Insurance's demonstration of good faith, including actions it took to rectify the consequences of the prohibited act; and other matters that justice may require including prompt and earnest actions to prevent future violations.
6. Praetorian Insurance 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. Praetorian Insurance 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, 414.003, 415.002, and 415.021.
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)-(i).
3. Praetorian Insurance 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 §§ 408.081, 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.
8. Pursuant to TEX. LAB. CODE § 408.061(d), a weekly DB may not exceed 100% of the state average weekly wage rounded to the nearest whole dollar.
9. Pursuant to TEX. LAB. CODE § 408.181(a) and (b), an insurance carrier must pay accurate DBs to a legal beneficiary. The amount of a DB is equal to 75% of the employee's average weekly wage.
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 DBs.
11. 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 DBs 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 DB payments in the manner DWC rules prescribe.
12. Pursuant to 28 TEX. ADMIN. CODE § 132.17(f), an insurance carrier must initiate payment of DBs 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.
13. Praetorian Insurance violated TEX. LAB. CODE § 415.002(a)(20) and (22) each time it failed to timely pay accurate DBs.

14. Pursuant to 28 TEX. ADMIN. CODE § 124.2(a) and (b), insurance carriers are required to notify DWC and the injured employee of actions taken or events occurring in a claim, as specified by rule in the form and manner DWC prescribes. Inherent in this duty is the requirement that insurance carriers report this information accurately.
15. Praetorian Insurance violated TEX. LAB. CODE § 415.002(a)(20) each time it failed to timely or accurately notify DWC and the injured employee of actions it took or events that occurred in a claim, as specified by rule in the form and manner DWC prescribed.

Order

It is ordered that Praetorian Insurance Company must pay an administrative penalty of \$39,000 within 30 days from the date of this order. Praetorian 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.



Dan Paschal, J.D.
Deputy Commissioner
Policy & Customer Services
TDI, Division of Workers' Compensation

Approved Form and Content:



Mackenzie Arthur
Staff Attorney, Enforcement
Compliance and Investigations
TDI, Division of Workers' Compensation

Unsworn Declaration

STATE OF California §

§

COUNTY OF San Diego §

§

Pursuant to the TEX CIV. PRAC. & REM. CODE § 132.001(a), (b), and (d), my name is Daniel Rufenacht. I hold the position of Vice President, Claims and am the authorized representative of Praetorian Insurance Company. My business address is:

One QBE Way, Sun Prairie, Dane, WI, 53596.

(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.

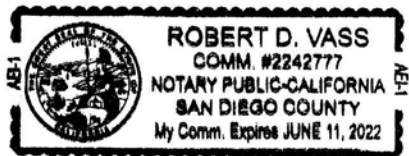
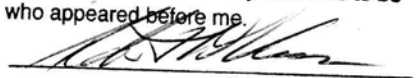


Declarant

Executed on 9/20, 2021

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Diego
Subscribed and sworn to (or affirmed) before me on this 20 day of September, 20 21
by Daniel RUFENACHT
proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.



Confidential Information Redacted
Texas Labor Code §§402.083 and 402.092