

No. **2025-9562**

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

Date: 10/17/2025

Subject Considered:

Texas Mutual Insurance Company
2200 Aldrich Street
Austin, Texas 78723

Consent Order
DWC Enforcement File Nos. 36575 & 36576

General remarks and official action taken:

This is a consent order with Texas Mutual 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 licensed to write workers' compensation/employers' liability insurance in Texas.
2. Respondent was classified as "high" tier in the 2020, 2022, and 2024 Performance Based Oversight (PBO) assessments.

Failure to Timely Pay Benefits Based on a Designated Doctor (DD) Report and Properly Recoup Overpayment of Income Benefits

3. On [REDACTED], Respondent received notice of a workplace injury that occurred on [REDACTED]. Shortly after receiving notice, Respondent calculated the injured employee's average weekly wage (AWW) as [REDACTED].
4. On [REDACTED], Respondent sent a Plain Language Notice Form-11, *Notice of Disputed Issue(s) and Refusal to Pay Benefits* (PLN-11), to the injured employee that disputed the injured employee's entitlement to temporary income benefits (TIBs) by disputing disability. In the PLN-11, Respondent informed the injured employee that there was no evidence that the employee lost the required eight days of time.
5. The injured employee continued to work for the employer through the end of [REDACTED] [REDACTED] earning AWW.
6. Between [REDACTED], to [REDACTED], DWC ordered Respondent to pay [REDACTED] in attorney fees from the injured employee's benefits at a rate of 25% of each income benefit paid to the injured employee.
7. From [REDACTED] to [REDACTED], Respondent received multiple DWC-73, *Texas Workers' Compensation Work Status Reports* (DWC-73) releasing the injured employee to work without restriction, removing the injured employee from work, and returning the injured employee to work with restrictions.
8. The injured employee had post-injury earnings from [REDACTED] to [REDACTED] [REDACTED]. The injured employee did not report the post-injury earnings to Respondent, nor did the injured employee earn the injured employee's AWW.
9. On [REDACTED], the injured employee applied for a position with a new employer. When the injured employee applied for the position with the new employer, the injured employee did not have post-injury earnings, nor was the injured employee receiving TIBs payments.
10. On [REDACTED], Respondent and the injured employee attended a benefit review conference.

11. On [REDACTED], Respondent and the injured employee agreed there was [REDACTED] from [REDACTED], through [REDACTED]. Two days later, Respondent paid TIBs for those benefit weeks.
12. On [REDACTED], Respondent made the first weekly payment of TIBs for the benefit week beginning [REDACTED], and continued to pay TIBs weekly until [REDACTED].
13. Between [REDACTED], to [REDACTED], the injured employee worked for the new employer making approximately [REDACTED] per week.
14. On [REDACTED], Respondent received a DWC-73 returning the injured employee to work without restriction.
15. On [REDACTED], Respondent sent a Plain Language Notice Form-09b, *Notice of Suspension of Indemnity Benefits* (PLN-9b), to the injured employee disputing that the injured employee had any disability between [REDACTED], through [REDACTED], because the employee was able to obtain some post-injury employment. Respondent stated that it was entitled to recoup the entire [REDACTED] in TIBs paid during that time, and intended to reduce future income benefits to recoup the overpayment. Respondent also accused the injured employee of committing fraud under Tex. Lab. Code § 415.008(a) by failing to inform Respondent of the post-injury earnings.
16. However, Tex. Lab. Code § 415.008(a) establishes an administrative violation for knowingly or intentionally: (1) making a false or misleading statement; (2) misrepresenting or concealing a material fact; (3) fabricating, altering, concealing, or destroying a document; or (4) conspiring to commit an act described by (1), (2), or (3). DWC must investigate and find sufficient evidence prior to finding an administrative violation under this statute.
17. When Respondent sent the PLN-9b on [REDACTED], DWC had not determined that the injured employee committed an administrative violation under Labor Code § 415.008.
18. According to 28 Tex. Admin. Code § 126.16(c), if the insurance carrier wishes to recoup the overpayment in an amount greater than that permitted by subsection (b) of this section, the insurance carrier must attempt to enter into a written

- agreement with the injured employee and, if unable to do so, request dispute resolution through the dispute resolution processes as outlined in the DWC Rules.
19. Respondent did not pursue the dispute resolution process to recoup the overpayment in an amount greater than that permitted by 28 Tex. Admin. Code § 126.16(b), nor is there any record of a written agreement with the injured employee to recoup benefits.
 20. On [REDACTED], Respondent received a DD report of a DD examination performed on [REDACTED].
 21. The DD determined that the injured employee reached maximum medical improvement on [REDACTED], with a [REDACTED] impairment rating.
 22. Respondent was required to pay the IIBs accrued since [REDACTED], no later than five days after receiving the DD report. The deadline to pay the accrued IIBs was [REDACTED].
 23. On [REDACTED], Respondent sent a Plain Language Notice Form-03b, *Notice of Maximum Medical Improvement and Permanent Impairment* (PLN-3b), to the injured employee. In the PLN-3b, Respondent informed the injured employee that it would recoup the [REDACTED] by lump sum and only pay [REDACTED] in IIBs minus attorney fees owed.
 24. When Respondent sent the PLN-3b on [REDACTED], DWC still had not found the injured employee committed an administrative violation under Labor Code § 415.008.
 25. Because DWC had not found the injured employee committed an administrative violation under Labor Code § 415.008, there was not a written agreement with the injured employee to recoup benefits for more than the amount permitted under 28 Tex. Admin. Code § 126.16(b), and Respondent did not pursue the dispute resolution process to recoup the overpayment, Respondent was only permitted to reduce each income benefit payment by 10% of the weekly income benefit due to the 25% reduction to pay attorney fees.
 26. On [REDACTED], Respondent paid [REDACTED] in IIBs and attorney fees 29 days late. Respondent failed to pay all IIBs accrued since [REDACTED], plus interest.

Failure to Timely Comply with a Contested Case Hearing Decision and Order (CCH D&O)

27. On [REDACTED], DWC issued a CCH D&O finding: (1) the injured employee did not have disability from [REDACTED], through [REDACTED]; and (2) Respondent was not entitled to reduce the injured employee's IIBs to recoup the overpayment of [REDACTED]. Respondent received the CCH D&O on [REDACTED].
28. The CCH D&O became final on [REDACTED]. Respondent was required to comply with the CCH D&O within 20 days, or by [REDACTED].
29. Respondent failed to timely comply with the CCH D&O.
30. On [REDACTED], the Appeals Panel issued a decision finding the CCH D&O final.
31. On [REDACTED], Respondent paid the improperly recouped IIBs with interest, complying with the CCH D&O 35 days late.

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. Improper attempts to recoup an overpayment harm injured employees and abrogates a carrier's responsibilities under the Texas Workers' Compensation Act and DWC Rules.
3. Compliance with DWC orders is imperative to minimize disputes and resolve them promptly and fairly. In addition, failure to provide income benefits in a timely and cost-effective manner is harmful to injured employees and the Texas workers' compensation system.
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;
 - 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.
5. DWC found the following factors in Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e) to be aggravating:
- a. the violations are serious, involving [REDACTED] in untimely benefits up to 35 days late and a violation of DWC order, which is priority violation under Tex. Lab. Code § 402.0235;
 - b. Respondent has a history of similar violations, including six consent orders and one warning letter involving substantially similar violations;
 - c. a penalty is necessary to deter future violations;
 - d. the conduct had a negative impact on the delivery of [REDACTED] in benefits to an injured employee;
 - e. Respondent received an economic benefit from the prohibited acts; and
 - f. Respondent is the largest workers' compensation insurance carrier in Texas and has a heightened awareness of the legal duty to comply with the Texas Workers' Compensation Act and DWC rules
6. DWC found the following factors in Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e) to be mitigating:
- a. Respondent received a "high" PBO ratings for the past three assessments;
 - b. Respondent took action to prevent future violations by distributing guidance to its adjustors emphasizing the recoupment process found in 28 Tex. Admin. Code § 126.16; and

- c. Respondent also took action to prevent future violations by distributing guidance to its adjustors emphasizing the need to comply with Tex. Lab. Code § 415.008.
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, 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 § 415.002(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 Benefits Based on a DD Report

6. 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.
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 28 Tex. Admin. Code § 127.10(i), an insurance carrier must pay all benefits in accordance with the DD report for the issues in dispute no later than five days after receiving the report.
9. Respondent violated Tex. Lab. Code §§ 409.023 and 415.002(a)(16), (20), and (22); and 28 Tex. Admin. Code § 127.10(i) by failing to timely pay accrued income benefits in accordance with the DD report no later than five days after receiving the report.

Failure to Timely Pay Interest with Indemnity Benefits

10. Pursuant to Tex. Lab. Code § 408.064 and 28 Tex. Admin. Code § 126.12(b), accrued but unpaid income benefits and interest shall be paid in a lump sum.
11. Respondent violated Tex. Lab. Code §§ 408.064; 415.002(a)(20) and (22); and 28 Tex. Admin. Code § 126.12(b) each time Respondent failed to timely pay interest with accrued but unpaid income benefits.

Failure to Follow the Procedures for Recouping Overpayments of Income Benefits

12. Pursuant to Tex. Lab. Code § 408.0815(a)(1), the commissioner by rule shall establish a procedure by which an insurance carrier may recoup an overpayment of income benefits from future income benefit payments.
13. Pursuant to Tex. Lab. Code § 415.008(c), a person who has obtained an excess payment in violation of this section is liable for full repayment plus interest.
14. Pursuant to 28 Tex. Admin. Code § 126.16(b)(1), if an insurance carrier determines that it has overpaid income benefits to an injured employee, the insurance carrier

may recoup the overpayment from future income benefit payments after the insurance carrier notifies the injured employee in writing that it will begin withholding benefits to recoup an overpayment.

15. Pursuant to 28 Tex. Admin. Code § 126.16(b)(3), if the injured employee's income benefits are concurrently being reduced to pay approved attorney's fees or to recoup a division approved advance, the insurance carrier may recoup the overpayment under this subsection in an amount not to exceed 10% of the income benefit payment to which the injured employee is entitled.
16. Respondent violated Tex. Lab. Code § 415.002(a)(20) and 28 Tex. Admin. Code § 126.16(b)(3) by failing to properly recoup overpayments of income benefit.

Failure to Timely Comply with a CCH D&O

17. Pursuant to Tex. Lab. Code §§ 415.0035(e) and 415.021(a), an insurance carrier commits an administrative violation if it violates, fails to comply with, or refuses to comply with a DWC order.
18. Pursuant to Tex. Lab. Code § 410.169 and 28 Tex. Admin. Code § 142.16, a party is required to comply with a CCH D&O within 20 days of the order becoming final. However, if the CCH D&O involves benefits, a party must comply no later than the fifth day after filing a written request for appeal.
19. Respondent violated Tex. Lab. Code §§ 410.169; 415.002(a)(20) and (22); 415.0035(e); 415.021; and 28 Tex. Admin. Code § 142.16 by failing to timely comply with a DWC order for benefits.

Order

It is ordered that Texas Mutual Insurance Company must pay an administrative penalty of \$9,500 within 30 days from the date the Commissioner signs the order.

After receiving an invoice, Texas Mutual 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.



Jeff Nelson
Commissioner
TDI, Division of Workers' Compensation

Approved Form and Content:



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

Unsworn Declaration

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is PEPPIA SHERROUSE. I hold the position of VP CLAIMS OPERATIONS and am the authorized representative of Texas Mutual Insurance Company. My business address is: 2200 ALDRICH ST, AUSTIN, TRAVIS, TX, 78723.
(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.

Peppia Sherrouse
Declarant

Executed on SEPTEMBER 23, 2025.