

No. **2019** **5843**

Confidential Information Redacted
Texas Labor Code §§402.083 & 402.092

OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF WORKERS' COMPENSATION

Date: **JAN 11 2019**

Subject Considered:

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

CONSENT ORDER
TDI ENFORCEMENT FILE NO. 17450

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.
2. New Hampshire was classified as "poor" tier in the 2007 Performance Based Oversight (PBO) assessment, and "average" tier in the 2009, 2010, 2012, 2014, and 2016 PBO assessments.

**FAILURE TO ADJUST AVERAGE WEEKLY WAGE AND PAY BENEFITS
ACCURATELY**

3. On [REDACTED] New Hampshire received payroll records from the Office of Injured Employee Counsel that included 14 weeks of wages prior to the injury.
4. New Hampshire was required to adjust the average weekly wage (AWW) and begin payment of benefits based upon the AWW no later than the first payment due at least seven days following the date the information was received.

5. New Hampshire issued an income benefit payment to the injured employee on [REDACTED] but failed to adjust the AWW based on the payroll records received. New Hampshire later adjusted the AWW and issued a deficit payment on [REDACTED], which was 28 days late.

FAILURE TO TAKE FINAL ACTION ON A REQUEST FOR RECONSIDERATION

6. On [REDACTED] New Hampshire received a complete request for reconsideration of a medical bill from the health care provider for the date of service of [REDACTED]
7. New Hampshire was required to take action regarding payment or denial of the reconsideration request no later than the 30th day after receipt of the request, which in this case was on [REDACTED].
8. New Hampshire took action and issued payment plus interest to the health care provider on [REDACTED] which was 88 days late.

ASSESSMENT OF PENALTY

9. Failure to accurately provide appropriate income benefits in a manner that is timely and cost-effective is harmful to injured employees and to the workers' compensation system of the state.
10. Failure to take timely action on requests for reconsideration needlessly delays the medical fee dispute resolution process.
11. New Hampshire acknowledges harm to the system and agrees that the penalty assessed is reasonable.
12. In assessing the penalty for this case, the commissioner 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 the Texas Department of Insurance, Division of Workers' Compensation (DWC) rules; and
 - to the extent reasonable, the economic benefit resulting from the prohibited act.
13. New Hampshire acknowledges that in assessing the penalty, the commissioner appropriately and fully considered the relevant applicable factors set forth in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e).
14. New Hampshire acknowledges that this consent order sufficiently communicates information about the penalty, including the relevant statutes or rules violated, the conduct giving rise to the violations, and the factors considered in determining the penalty.

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)(20), an insurance carrier or its representative commits an administrative violation each time it violates a DWC rule.
5. Pursuant to 28 TEX. ADMIN. CODE § 128.1(e), if an insurance carrier determines or is notified that the injured employee's AWW is different than what the insurance carrier had previously determined (either as a result of subsection (c)(2) of this section, receipt of an updated wage statement, or by operation of other adjustments permitted/required under this title), the insurance carrier shall adjust the AWW and begin payment of benefits based upon the adjusted AWW no later than the first payment due at least seven days following the date the insurance carrier receives the new information regarding the AWW.
6. New Hampshire violated TEX. LAB. CODE § 415.002(a)(20) when it failed to adjust the AWW and begin payment of benefits based upon the adjusted AWW no later than the first payment due at least seven days following the date New Hampshire received new information regarding the AWW.

7. Pursuant to 28 TEX. ADMIN. CODE § 133.250, an insurance carrier is required to take final action on a complete request for reconsideration of the insurance carrier's action on a medical bill within 30 days of receipt of the request for reconsideration. The insurance carrier shall provide an explanation of benefits for all items included in a reconsideration request in the form and format prescribed by DWC.
8. New Hampshire violated TEX. LAB. CODE § 415.002(a)(20) when it failed to timely take final action on a request for reconsideration of a medical bill action within 30 days of receipt.

ORDER

New Hampshire Insurance Company is ORDERED to pay an administrative penalty of \$7,500 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.



Cassie Brown *NCW*
Commissioner of Workers' Compensation

Approved as to Form and Content:



Glen Imes
Staff Attorney, DWC Enforcement
Texas Department of Insurance

