

No. \_\_\_\_\_

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

**2019 5890**

Date: **MAR 11 2019**

**Subject Considered:**

**THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA**  
175 Water Street, Floor 18  
New York, New York 10038-4976

**CONSENT ORDER**  
TDI-DWC ENFORCEMENT FILE NO. 17839

**General remarks and official action taken:**

The commissioner of workers' compensation (commissioner) considers whether disciplinary action should be taken against The Insurance Company of the State of Pennsylvania.

**WAIVER**

The Insurance Company of the State of Pennsylvania acknowledges that the Texas Labor Code and other applicable laws provide certain rights. The Insurance Company of the State of Pennsylvania 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. The Insurance Company of the State of Pennsylvania 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. The Insurance Company of the State of Pennsylvania was classified as "average" tier in the 2007, 2009, 2010, 2014, 2016, and 2018 Performance Based Oversight (PBO) assessments. The Insurance Company of the State of Pennsylvania was classified as "high" tier in the 2012 PBO assessment.

**FAILURE TO TIMELY PAY AN IRO FEE**

3. On [REDACTED] The Insurance Company of the State of Pennsylvania received notice of an invoice from RyCo Med Review, the independent review organization (IRO), in the amount of [REDACTED]

Confidential Information Redacted  
Texas Labor Code §§402.083 & 402.092

4. The Insurance Company of the State of Pennsylvania was required to remit payment to the IRO within 15 days after receipt of the invoice, which was by [REDACTED]
5. The Insurance Company of the State of Pennsylvania issued payment on [REDACTED] and [REDACTED] to the wrong address. Payment was issued to the correct address for the IRO on [REDACTED] which was 460 days late.

#### ASSESSMENT OF SANCTION

6. Prompt payment of IRO fees is imperative to the Texas Department of Insurance, Division of Workers' Compensation's (DWC) goal of ensuring that injured employees have access to prompt, high-quality medical care.
7. 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.
8. 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; the history of compliance with electronic data interchange requirements; and other matters that justice may require including the size of the company or practice.
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 mitigating: the promptness and earnestness of actions to prevent future violations; and evidence of

heightened awareness of the legal duty to comply with the Texas Workers' Compensation Act and DWC rules.

10. The Insurance Company of the State of Pennsylvania acknowledges that DWC and The Insurance Company of the State of Pennsylvania have 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).
11. The Insurance Company of the State of Pennsylvania 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, 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 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 § 413.031(h) and 28 TEX. ADMIN. CODE § 133.308, insurance carriers are required to pay the fees for an IRO's review of the insurance carrier's denial of preauthorization or concurrent review within 15 days after receipt of an invoice from the IRO.
7. The Insurance Company of the State of Pennsylvania violated TEX. LAB. CODE §§ 415.002(a)(20) and 415.002(a)(22) when it failed to timely pay the IRO fee of \$650.00.

2019 5890

ORDER

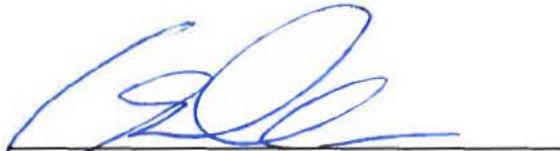
The Insurance Company of the State of Pennsylvania is ORDERED to pay an administrative penalty of \$4,000 within 30 days from the date of this Order.

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 *NCW*  
Commissioner of Workers' Compensation

Approved as to Form and Content:



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Glen Imes  
Staff Attorney, DWC Enforcement  
Texas Department of Insurance

