

No. **2022-7501**

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

Date: 9/14/2022

Subject Considered:

New Hampshire Insurance Company
175 Water Street, Floor 18
New York, New York 10038-4976

Consent Order
DWC Enforcement File Nos. 29422, 29424, 29632, & 29694

General remarks and official action taken:

This is a consent order with New Hampshire 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. 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 workers' compensation/employers' liability insurance in Texas.

2. Respondent was classified as "poor" tier in the 2007 Performance Based Oversight (PBO) assessment. Respondent was classified as "average" tier in years 2009, 2010, 2012, 2014, 2016, 2018, and 2020 PBO assessments.

Failure to Pay Accrued Income Benefits Based on a Designated Doctor Report

File No. 29422

3. On [REDACTED] an employee suffered an injury during the course and scope of employment.
4. On [REDACTED] Respondent issued a notice of dispute of the existence, duration, or extent of injury.
5. On [REDACTED] Respondent filed another notice of dispute of the extent of injury.
6. On [REDACTED] the injured employee attended a designated doctor (DD) exam which determined the injured employee's maximum medical improvement (MMI) and impairment rating (IR).
7. On [REDACTED] Respondent received a report from the DD determining that the injured employee's inability to work, or earn pre-injury wages, was the direct result of the compensable injury.
8. As disability was the issue in dispute, Respondent was required to pay accrued income benefits no later than five days after receiving the DD's report. The deadline to pay benefits was [REDACTED]
9. Respondent issued payment of accrued income benefits on [REDACTED] which was 18 days late.

Failure to Timely Act on a Medical Bill

File No. 29424

10. On [REDACTED] a health care provider provided medical services to an injured employee. On [REDACTED] Respondent received a completed medical bill in the amount of [REDACTED] from the health care provider.

11. Respondent was required to act on the bill within 45 days of receiving it. The deadline to act was [REDACTED]
12. On [REDACTED] Respondent issued payment in the amount of [REDACTED] which was 83 days late.

File No. 29632

13. On [REDACTED] a health care provider provided medical services to an injured employee. On [REDACTED] Respondent received a completed medical bill in the amount of [REDACTED] from the health care provider.
14. Respondent was required to act on the bill within 45 days of receiving it. The deadline to act was [REDACTED]
15. [REDACTED] Respondent issued payment, including accrued interest, in the amount of [REDACTED] which was 132 days late.

File No. 29694

16. On [REDACTED] a health care provider provided medical services to an injured employee. On [REDACTED] Respondent received a completed medical bill in the amount of [REDACTED] from the health care provider.
17. Respondent was required to act on the bill within 45 days of receiving it. The deadline to act was [REDACTED]
18. On [REDACTED] Respondent issued payment, which was six 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. Failure to pay health benefits in a timely and cost-effective manner is harmful to injured employees and the Texas workers' compensation system. Prompt payment of medical bills is imperative to DWC's goal of ensuring that injured employees have access to prompt, high-quality medical care.
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; and whether the administrative violation had a negative impact on the delivery of benefits to an injured employee.

5. DWC found the following factors in Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e) to be mitigating: other matters that justice may require, specifically Respondent has committed to conducting trainings to promote future compliance.
6. 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).
7. 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), 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.

Failure to Pay Accrued Income Benefits Based on a Designated Doctor Report

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 § 408.0041(f), an insurance carrier must pay benefits based on the opinion of the DD during any pending dispute.
9. Pursuant Tex. Lab. Code § 408.041(e), the report of the designated doctor has presumptive weight unless the preponderance of the evidence is to the contrary.
10. 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.
11. Respondent violated Tex. Lab. Code §§ 409.023; 415.002(a)(16), (20), and (22); and 28 Tex. Admin. Code § 127.10(h) by failing to timely pay accrued income benefits in accordance with a DD report no later than five days after receiving the report.

Failure to Timely Act on a Medical Bill

12. Pursuant to Tex. Lab. Code § 408.027 and 28 Tex. Admin. Code § 133.240, an insurance carrier is required to timely process and take final action on a completed medical bill within 45 days of receiving the bill.
13. Respondent violated Tex. Lab. Code §§ 408.027; 415.002(a)(20) and (22); and 28 Tex. Admin. Code § 133.240 each time Respondent failed to pay, reduce, deny, or determine to audit a completed medical bill within 45 days of receiving the bill.

Commissioner's Order
New Hampshire Insurance Company
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Order

It is ordered that New Hampshire Insurance Company must pay an administrative penalty of \$17,500 within 30 days from the date of this order. New Hampshire 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.



Jeff Nelson
Commissioner
TDI, Division of Workers' Compensation

Approved Form and Content:



Lamer Garcia
Staff Attorney, Enforcement
Compliance and Investigations
TDI, Division of Workers' Compensation

Confidential Information Redacted
Texas Labor Code §§402.083 and 402.092

Unsworn Declaration

STATE OF Connecticut §
§
COUNTY OF Hartford §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is Peter Macdonald. I hold the position of Vice President and am the authorized representative of New Hampshire Insurance Company. My business address is:

30 Hudson Street, Jersey City, Hudson, NJ, 07302.
(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.

DocuSigned by:
Peter Macdonald
0382AEAD7B074AC

Declarant

Executed on September 13, 2022.