

No. 2020-6361

Confidential Information Redacted  
Texas Labor Code §§402.083 & 402.092

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

**Date:** 06-10-2020

**Subject Considered:**

New Hampshire Insurance Company  
175 Water Street, 18th Floor  
New York City, New York 10038

Consent Order  
DWC Enforcement File Nos. 19444 and 19748

**General remarks and official action taken:**

This is a consent order with New Hampshire Insurance Company (New Hampshire). The commissioner of the Texas Department of Insurance, Division of Workers' Compensation (DWC) considers whether DWC should take disciplinary action against 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 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 multiple lines of insurance in Texas, including workers' compensation/employers' liability insurance.

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

DWC Enforcement File No. 19444: Failure to Pay Accurate Death Benefits

3. Between [REDACTED], through [REDACTED], New Hampshire underpaid death benefits in the amount of \$ [REDACTED].
4. New Hampshire paid \$ [REDACTED] in weekly death benefits instead of the required \$ [REDACTED].
5. On [REDACTED], and [REDACTED], New Hampshire issued partial payments to the beneficiary. On [REDACTED], New Hampshire issued a lump sum payment of \$ [REDACTED]. On [REDACTED], New Hampshire fully complied when it paid interest on the unpaid amounts.

DWC Enforcement File No. 19748: Failure to Comply with a DWC Order

6. On [REDACTED], New Hampshire received Medical Fee Dispute Resolution Findings and Decision Order No. [REDACTED].
7. This order required New Hampshire to pay \$1 [REDACTED] and applicable accrued interest by [REDACTED].
8. On [REDACTED], New Hampshire issued payment, which was 88 days late.

**Assessment of Sanction**

1. Failure to timely comply with an administrative law judge's order for payment of TIBs and DWC orders for payment of medical bills is not cost-effective and is harmful to injured employees and the Texas workers' compensation system.
2. Failure to provide accurate death benefits in a timely and cost-effective manner is harmful to injured employees and the Texas workers' compensation system.

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, there was a reasonable uncertainty about which wage statement should have been used to calculate death benefits for the injured employee; and the penalty necessary to deter future violations.
6. New Hampshire 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. New Hampshire 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, and 414.002.
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)(7), and 28 TEX. ADMIN. CODE § 180.26(h).
3. New Hampshire 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 § 415.002(a)(17), an insurance carrier or its representative commits an administrative violation if it fails to pay an order awarding benefits.
8. Pursuant to 28 TEX. ADMIN. CODE § 142.20, a party subject to an interlocutory order for payment of accrued and unpaid income benefits must pay them no later than the fifth day after it receives the order.

9. New Hampshire violated TEX. LAB. CODE §§ 415.002(a)(20) and 415.002(a)(17) when it failed to timely comply with an interlocutory order to pay income benefits.
10. Pursuant to TEX. LAB. CODE § 408.181(a) and (b), an insurance carrier must pay accurate death benefits to a legal beneficiary. Pursuant to TEX. LAB. CODE § 408.061, the amount of a death benefit is equal to 75% of the employee's average weekly wage.
11. New Hampshire violated TEX. LAB. CODE §§ 415.002(a)(22) each time it failed to pay accurate death benefits.
12. Pursuant to TEX. LAB. CODE §§ 415.021(a) and 415.0035(e), an insurance carrier commits an administrative violation if it violates, fails to comply with, or refuses to comply with a DWC order.
13. New Hampshire violated TEX. LAB. CODE §§ 415.021(a) and 415.0035(e) when it failed to comply with a DWC order.

**Order**

It is ordered that New Hampshire Insurance Company must pay an administrative penalty of \$16,500 within 30 days from the date of this order. New Hampshire Insurance Company must pay the administrative penalty by 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 9999, P.O. Box 149104, Austin, Texas 78714-9104.



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Cassie Brown  
Commissioner of Workers' Compensation

Approved Form and Content:



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Andrés Durá  
Staff Attorney, Enforcement  
Compliance and Investigations  
Division of Workers' Compensation

Commissioner's Order  
New Hampshire Insurance Company  
DWC Enforcement File Nos. 19444 and 19748  
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**Affidavit**

**STATE OF** Connecticut

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**COUNTY OF** Hartford

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Before me, the undersigned authority, personally appeared \_\_\_\_\_,  
who being by me duly sworn, deposed as follows:

"My name is Peter Macdonald. I am of sound mind, capable of making this  
statement, and have personal knowledge of these facts which are true and correct.

I hold the office of Vice President and am the authorized representative of  
New Hampshire Insurance Company. I am duly authorized by the organization to execute  
this statement.

New Hampshire Insurance Company has knowingly and voluntarily entered into this  
consent order and agrees with and consents to the issuance and service of this consent  
order."

DocuSigned by:  
Peter Macdonald  
D382AEAD7B074AC...  
Affiant

SWORN TO AND SUBSCRIBED before me on \_\_\_\_\_, 2020.

(NOTARY SEAL)

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Printed Name of Notary Public

\_\_\_\_\_  
Commission Expiration

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