

No. **2024-8810**

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

Date: 9/9/2024

Subject Considered:

The Insurance Company of the State of Pennsylvania
175 Water Street Floor 18
New York, New York 10038-4976

Consent Order
DWC Enforcement File No. 34757

General remarks and official action taken:

This is a consent order with The Insurance Company of the State of Pennsylvania (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 is licensed to write multiple lines of insurance in Texas, including workers' compensation/employers' liability insurance.
2. Respondent was classified as "average" tier in the 2018, 2020, and 2022 Performance Based Oversight (PBO) assessments.

Failure to Provide Notice of Suspension of Indemnity Benefits as Required by DWC.

3. Between [REDACTED], and [REDACTED], Respondent paid temporary income benefits (TIBs) weekly to an injured employee for 21 weeks.
4. On [REDACTED], Respondent issued its last TIBs payment to the injured employee. On the same day, a designated doctor (DD) certified that the injured employee had a [REDACTED] % impairment and reached Maximum Medical Improvement (MMI) on [REDACTED], thus the injured employee was entitled to nine weeks of impairment income benefits (IIBs).
5. Due to the DD's certification, Respondent had overpaid TIBs to the injured employee by \$ [REDACTED]. At this point, Respondent had paid more than the nine weeks of IIBs owed to the injured employee.
6. Nevertheless, on [REDACTED], Respondent issued an additional payment to the injured employee. This payment appears to be in error and an inadvertent continuation of the previous payment schedule.
7. The next day, on [REDACTED], Respondent subsequently placed a stop on the check without further notice to the injured employee.
8. Respondent was required to issue a Plain Language Notice (PLN) - *Notice of Suspension of Indemnity Benefits* (PLN-9) within 10 days of the last benefit payment, or by [REDACTED].
9. On [REDACTED], Respondent issued a PLN-3b, *Notice of Maximum Medical Improvement and Permanent Impairment*, stating the following:

You will get impairment income benefits starting [REDACTED].
 You will get income benefits of [REDACTED] each week for 9 weeks.
 This amount is based on 70% of the average amount of money you got from work each week, which was \$ [REDACTED].
 If this amount is lowered for any reason you will get a letter letting you know.

...

Insurance carrier comments: You were overpaid TIBs in the amount of \$ [REDACTED] for period [REDACTED] thru [sic] [REDACTED]. Based on your [REDACTED] % rating, you would be entitled to [REDACTED] (\$ [REDACTED] x 9 weeks). We're taking full credit

for the \$ [REDACTED] against your TIB overpayment. No additional indemnity benefits are owed at the present time.

10. On the same date, [REDACTED], Respondent also filed a PLN-9, *Notice of Suspension of Indemnity Benefits*, seven days late. The PLN-9 stated:
- TIBs will stop on [REDACTED]. . .
- The reason for stopping benefits is: Designated Doctor released you to return to work full duty on [REDACTED] resulting in TIB overpayment of \$ [REDACTED] for period [REDACTED] thru [sic] [REDACTED]. Any IIBs owed will be taken as a credit against your TIB overpayment.
11. Respondent issued the PLN-9 seven days late. Respondent also failed to adjust the claim in a reasonable and prudent manner because the late notice failed to timely notify the injured employee of the change in his benefits, which in turn caused a financial detriment to the injured worker.

Assessment of Sanction

1. Prompt communication between participants in the workers' compensation system regarding notices of suspension of benefits minimizes the possibility of disputes. Further, unreasonable claims handling delays the efficient resolution of claims and increases the likelihood of disputes.
2. 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.
3. 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 erratic nature of the claim adjusting; the penalty necessary to deter future violations; and other matters that justice may require. Specifically, Respondent failed to give the injured employee notice prior to stopping the last benefit check, which caused economic harm, i.e. an overdrawn account. Further, DWC considered the overall mismanagement of the claim as a systems issue that presents a risk of harm to future claimants.
 4. DWC considered as mitigating Respondent's overall lack of economic benefit as mitigating pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e).
 5. 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).
 6. 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, 402.00111, 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.
5. Pursuant to Tex. Lab. Code § 415.021, the commissioner may assess an administrative penalty against a person who commits an administrative violation.
6. Pursuant to Tex. Lab. Code § 415.002(a)(11), an insurance carrier or its representative commits an administrative violation by failing to process claims promptly in a reasonable and prudent manner.
7. Pursuant to Tex. Lab. Code § 415.002(a)(20) and (22), an insurance carrier or its representative commits an administrative violation by violating a commissioner rule or a provision of the Texas Workers' Compensation Act.
8. Pursuant to 28 Tex. Admin. Code §124.2(d)(6), an insurance carrier must notify the division and the claimant of termination or suspension of income or death benefits within 10 days of making the last payment for the benefits.
9. Pursuant to 28 Tex. Admin. Code § 126.16, an insurance carrier must notify the injured employee in writing that it will begin withholding benefits to recoup an overpayment. The notice must be in plain language and in English or Spanish, as appropriate. The notice must also include the reason for the overpayment; the amount of the overpayment to be recouped from future income benefit payments; the date recoupment will begin; and relevant documentation that supports the insurance carrier's determination of an overpayment, such as a wage statement or a supplemental report of injury. The notice must also advise the injured employee that if the injured employee disagrees that there has been an overpayment, the injured employee may request dispute resolution through the dispute resolution processes outlined in Chapters 140 - 144 and 147 of this title (relating to Dispute Resolution), including expedited dispute resolution. The insurance carrier may not begin recoupment of the overpayment earlier than the second income benefit payment made after the written notice has been sent to the injured employee.
10. Respondent violated Tex. Lab. Code § 415.002(a)(11), (20) and (22) and 28 Tex. Admin. Code § 124.2(d)(6) by issuing late and confusing PLNs to the injured

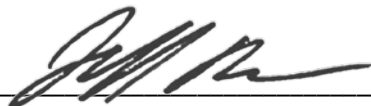
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employee and by stopping a check that had already been issued to the injured employee without notice.

Order


It is ordered that The Insurance Company of the State of Pennsylvania must pay an administrative penalty of \$2,200 within 30 days from the date the Commissioner signs the order.

After receiving an invoice, The Insurance Company of the State of Pennsylvania 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, P.O. Box 12030, Austin, Texas 78711-2030.



Jeff Nelson
Commissioner
TDI, Division of Workers' Compensation

Approved Form and Content:



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

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Unsworn Declaration

STATE OF NEW YORK §
§
COUNTY OF NEW YORK §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is Conor Murray. I hold the position of Senior Vice President and am the authorized representative of The Insurance Company of the State of Pennsylvania. My business address is:

1271 Avenue of the Americas, New York, New York, NY, 10020.
(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.

Signed by:
Conor Murray
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Declarant

Executed on August 21, 2024, 2024.