

No. 2020 - 6277

Confidential Information Redacted  
Texas Labor Code §§402.083 & 402.092

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

Date: MAR 05 2020

**Subject Considered:**

**NORGUARD INSURANCE COMPANY**  
39 Public Square  
P.O. Box A-H  
Wilkes-Barre, Pennsylvania 18703-0020

**CONSENT ORDER**  
TDI-DWC ENFORCEMENT FILE NO. 22670

**General remarks and official action taken:**

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

**WAIVER**

Norguard acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Norguard 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. Norguard 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 in the state of Texas to write multiple lines of insurance, including workers' compensation/employers' liability insurance.
2. Norguard was not selected to be tiered in the 2007, 2009, 2010, 2012, 2014, 2016, or 2018 Performance Based Oversight (PBO) assessments.

**FAILURE TO TIMELY PAY ATTORNEY FEES**  
**ORDERED BY THE TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS'**  
**COMPENSATION**

3. On [REDACTED], Norguard received an order for attorney fees from the Texas Department of Insurance, Division of Workers' Compensation (DWC), totaling \$[REDACTED].
4. DWC ordered Norguard to pay attorney fees in the amount of [REDACTED] % of each income benefit payment issued to the injured employee.

5. On [REDACTED], Norguard issued a check to the injured employee for indemnity benefits. Norguard was required to issue payment to the attorney the same day.
6. Norguard issued the required payment of attorney fees on [REDACTED], which was 15 days late.

#### ASSESSMENT OF SANCTION

7. Failure to timely pay attorney fees ordered by DWC makes it more difficult for attorneys to provide adequate legal services to injured employees and is harmful to the Texas workers' compensation system.
8. 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.
9. In assessing the sanction for this case, DWC found no mitigating factors and found the following factors to be aggravating as set forth in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e): the seriousness of the violation; the history and extent of previous administrative violations; the penalty necessary to deter future violations; and whether the administrative violation has negative impact on the delivery of benefits to an injured employee.
10. Norguard acknowledges that it has communicated with DWC 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. Norguard 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, and 414.003.
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 §§ 415.0035(e) and 415.021(a), an insurance carrier commits an administrative violation if it violates, fails to comply with, or refuses to comply with a DWC order.
7. Pursuant to 28 TEX. ADMIN. CODE § 152.1(c), insurance carriers are required to pay attorney fees ordered by DWC. The insurance carrier must begin payment out of the approved income benefits by mailing a check to the attorney within seven days after receiving the order and thereafter whenever income benefits are paid until the fee has been paid or income benefits cease.
8. Norguard violated TEX. LAB. CODE §§ 415.002(a)(20) and (22), and 415.021(a) when it failed to timely comply with a DWC order to pay attorney fees.

ORDER

Norguard Insurance Company is ORDERED to pay an administrative penalty of \$2,500 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  
Commissioner of Workers' Compensation

Approved as to Form and Content:



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Amy Norman  
Staff Attorney, DWC Enforcement  
Compliance & Investigations  
Division of Workers' Compensation  
Texas Department of Insurance

AFFIDAVIT

STATE OF Pennsylvania §  
COUNTY OF LuZerne §

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

"My name is David White. 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 Supervisor, and am the authorized representative of Norguard Insurance Company. I am duly authorized by said organization to execute this statement.

Norguard Insurance Company waives rights provided by the Texas Labor Code and other applicable laws, and acknowledges the jurisdiction of the Texas commissioner of workers' compensation.

Norguard Insurance Company is voluntarily entering into this consent order. Norguard Insurance Company consents to the issuance and service of this consent order."

[Signature]  
Affiant

SWORN TO AND SUBSCRIBED before me on January 13<sup>th</sup> 2020 ~~2019~~

(NOTARY SEAL)

Commonwealth of Pennsylvania - Notary Seal  
CAITLIN PARKER - Notary Public  
LuZerne County  
My Commission Expires May 1, 2022  
Commission Number 1332297

[Signature]  
Signature of Notary Public

Caitlin Parker  
Printed Name of Notary Public

May 1, 2022  
Commission Expiration Date