

No. 2020-6431

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

**Date:** 08-06-2020

**Subject Considered:**

TASB Risk Management Fund  
P.O. Box 26300  
Austin, Texas 78755-0300

Consent Order  
DWC Enforcement File No. 22677

**General remarks and official action taken:**

This is a consent order with TASB Risk Management Fund (TASB). The commissioner of the Texas Department of Insurance, Division of Workers' Compensation (DWC) considers whether DWC should take disciplinary action against TASB.

**Waiver**

TASB acknowledges that the Texas Labor Code and other applicable laws provide certain rights. TASB 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. TASB is a joint fund for self-insured governmental entities that provide workers' compensation benefits to their employees in accordance with TEX. LAB. CODE Ch. 504.
2. TASB was classified as "high" tier in the 2007, 2009, 2010, 2012, 2014, 2016, and 2018 Performance Based Oversight (PBO) assessments.

Termination of Benefits without Reasonable Grounds

3. On [REDACTED], TASB sent a DWC Form-PLN-3a, *Notice of Maximum Medical Improvement and No Permanent Impairment* (PLN-3a) to an injured employee to notify [REDACTED] that [REDACTED] had been determined to [REDACTED]. TASB further informed the injured employee that [REDACTED] would not be receiving payment of [REDACTED].
4. TASB sent the PLN-3a and terminated [REDACTED] based on a required medical evaluation (RME), dated [REDACTED]. The RME doctor concluded that the injured employee [REDACTED].
5. However, two prior designated doctor (DD) examinations, dated [REDACTED], each concluded that the injured employee had [REDACTED]. Because DD examinations carry presumptive weight absent a preponderance of the evidence to the contrary under TEX. LAB. CODE §§ 408.0041(e) and 408.1225(c) and 28 TEX. ADMIN. CODE § 127.10(g), TASB was not entitled to [REDACTED] based on the conclusions of the RME alone.
6. TASB did not present other evidence or establish other grounds to terminate [REDACTED].

Failure to Continue to Pay Benefits Week to Week

7. Payment of [REDACTED] for the benefit period of [REDACTED], was due [REDACTED]. TASB did not issue payment of [REDACTED] until [REDACTED] which was 67 days late.
8. In addition, TASB did not issue payment for the weekly benefit periods of [REDACTED].

**Assessment of Sanction**

1. Failure to provide appropriate income benefits in a timely and cost-effective manner is harmful to injured employees and the Texas workers' compensation system.

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 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; 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; and other matters that justice may require, including the size of the company or practice.
4. 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, including PBO assessments, the promptness and earnestness of actions to prevent future violations, and the fact that TASB is a joint fund for self-insured political subdivisions.

5. TASB 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).
6. TASB 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, 414.003, 415.002, and 415.021.
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. TASB 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 §§ 409.024(b) and 415.002(a)(2), an insurance carrier commits an administrative violation if the insurance carrier does not have reasonable grounds to terminate or reduce benefits, as determined by the commissioner.
6. TASB violated TEX. LAB. CODE §§ 409.024(b) and 415.002(a)(2) when it terminated TIBs without reasonable grounds, as determined by the commissioner.
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. TASB violated TEX. LAB. CODE §§ 4( [REDACTED] ) each time it failed to timely pay [REDACTED] as and when the benefits accrued.

### Order

It is ordered that TASB Risk Management Fund must pay an administrative penalty of \$12,500 within 30 days from the date of this order. TASB Risk Management Fund 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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Glen Imes  
Staff Attorney, Enforcement  
Compliance and Investigations  
Division of Workers' Compensation

Commissioner's Order  
TASB Risk Management Fund  
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**Affidavit**

**STATE OF** TEXAS §  
§  
**COUNTY OF** TRAVIS §

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

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

Associate Executive Director,

I hold the office of Risk Management Services and am the authorized representative of TASB Risk Management Fund. I am duly authorized by the organization to execute this statement.

TASB Risk Management Fund has knowingly and voluntarily entered into this consent order and agrees with and consents to the issuance and service of this consent order."

Dubravka Romano  
Affiant

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

(NOTARY SEAL)

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

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

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

Confidential Information Redacted  
Texas Labor Code §§402.083 & 402.092