

No. **2021-6991**

Confidential Information Redacted
Texas Labor Code §§402.083 and 402.092

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

Date: 9/27/2021

Subject Considered:

LUBA Casualty Insurance Company
P.O. Box 98082
Baton Rouge, Louisiana 70898-9082

Consent Order
DWC Enforcement File No. 25911

General remarks and official action taken:

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

Waiver

LUBA acknowledges that the Texas Labor Code and other applicable laws provide certain rights. LUBA 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. LUBA 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. LUBA was not selected to be tiered in the 2007, 2009, 2010, 2012, 2014, 2016, or 2018 Performance Based Oversight (PBO) assessments.

DWC Audit No. MBP-20-109

3. On [REDACTED] DWC initiated DWC Audit No. MBP-20-109 to determine whether LUBA complied with the Texas Labor Code and related rules on the timely processing of initial medical bills and the timely and accurate reporting of electronic data interchange (EDI) medical bill payment data to DWC.
4. The audit examined initial medical bills submitted to DWC between [REDACTED] and [REDACTED] DWC identified 100 bills for audit. A total of five initial medical bill payments failed to meet selection criteria and were dropped from the audit sample. The remaining 95 payments were reviewed to determine LUBA's compliance.
5. The audit focused on the timely and accurate processing of initial medical bills and EDI reporting. The EDI portion of the audit focused on the timely reporting of medical bill payment data and seven data elements reported to DWC (Rendering Line Provider National Provider Identifier Number (NPI), Rendering Line Provider State License Number, Referring Provider Last/Group Name, Referring Provider State License Number, Billing Provider Federal Employer Identification Number, Date Bill Received, and Date Bill Paid or Denied).

Failure to Timely Pay Medical Bills

6. LUBA failed to timely process 6% of the initial medical bills within 45 days of receiving the bill (six out of 95).
7. Specifically, LUBA issued late payments to health care providers between one and five days late in two instances, between six and 15 days late in three instances, and between 16 and 30 days late in one instance.

Failure to Timely or Accurately Report EDI Medical Bill Payment Data to DWC

8. LUBA failed to timely report the Rendering Line Provider NPI for 4% of the examined bills (four out of 95).
9. LUBA failed to accurately report the Rendering Line Provider State License Number for 6% of the examined bills (six out of 95).

10. LUBA failed to accurately report the Referring Provider State License Number for 3% of the examined bills (three out of 95).
11. LUBA failed to accurately report the Date Bill Received for 8% of the examined bills (eight out of 95).
12. LUBA failed to accurately report the Date Bill Paid or Denied for 2% of the examined payments (two out of 95).

Assessment of Sanction

1. Prompt processing and payment of medical bills is imperative to DWC's goal of ensuring that injured employees have access to prompt, high-quality medical care.
2. DWC relies on medical bill payment information insurance carriers submit for many purposes, including, but not limited to, providing required information and reports to the Legislature; ensuring that health care providers and insurance carriers comply with DWC's medical policies and fee guidelines; creating medical fee guidelines; adopting treatment and return-to-work guidelines; and detecting patterns and practices in medical charges, payments, and protocols.
3. DWC relies on claims information insurance carriers submit for many purposes, including, but not limited to, providing required information and reports to the Legislature, ensuring that insurance carriers comply with the Texas Labor Code and DWC rules, and detecting patterns and practices in actions taken on claims.
4. 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 EDI 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.
5. 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, and whether the administrative violation had a negative impact on the delivery of benefits to an injured employee.
6. DWC found the following factors set forth in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e) to be mitigating: the history and extent of previous administrative violations as the insurance carrier does not have a history of previous violations; the history of full compliance with EDI requirements; the demonstrated good faith of the violator, including the promptness and earnestness of actions to prevent future violations as the insurance carrier has instituted additional training programs to ensure that the error does not reoccur; and other matters that justice requires, including the size of the insurance carrier.
7. LUBA 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).
8. LUBA 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)(6)-(7), and 28 TEX. ADMIN. CODE § 180.26(h) and (i).
3. LUBA 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 § 408.027 and 28 TEX. ADMIN. CODE § 133.240, insurance carriers are required to timely process and take final action on a properly completed medical bill within 45 days of receiving the bill.
8. LUBA violated TEX. LAB. CODE §§ 415.002(a)(20) and 415.002(a)(22) each time it failed to timely process a properly completed medical bill within 45 days of receiving the bill.
9. Pursuant to 28 TEX. ADMIN. CODE § 134.804(d), insurance carriers are responsible for timely and accurately submitting medical EDI records to DWC.
10. LUBA violated TEX. LAB. CODE § 415.002(a)(20) each time it failed to submit timely and accurate medical EDI records to DWC.

Order

It is ordered that LUBA Casualty Insurance Company must pay an administrative penalty of \$1,500 within 30 days from the date of this order. LUBA Casualty 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.



Dan Paschal, J.D.
Deputy Commissioner-Policy & Customer Services
TDI, Division of Workers' Compensation

Approved Form and Content:



Amy Norman
Staff Attorney, Enforcement
Compliance and Investigations
Division of Workers' Compensation

Affidavit

STATE OF Louisiana §
Parish §
COUNTY OF East Baton Rouge §

Before me, the undersigned authority, personally appeared Russell Michiels, Jr. who being by me duly sworn, deposed as follows:

"My name is Russell Michiels, Jr. 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 AVP Claims Mgr and am the authorized representative of LUBA Casualty Insurance Company. I am duly authorized by the organization to execute this statement.

LUBA Casualty 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."

Russell Michiels, Jr.
Affiant

SWORN TO AND SUBSCRIBED before me on August 11, 2021.

(NOTARY SEAL)



Myra Gamble Holstein
Signature of Notary Public

Myra Gamble Holstein
Printed Name of Notary Public

At Death
Commission Expiration

Confidential Information Redacted
Texas Labor Code §§402.083 and 402.092