

No. DWC - 10 - 0079

OFFICIAL ORDER
of the
COMMISSIONER OF WORKERS' COMPENSATION
of the
STATE OF TEXAS
AUSTIN, TEXAS

Date: SEP 16 2010

Subject Considered:

ACE AMERICAN INSURANCE COMPANY
436 Walnut Street
Philadelphia, PA 19105

CONSENT ORDER
DISCIPLINARY ACTION

TDI ENFORCEMENT FILE NOS. 52064, 53287, 54538, 57089, 57091, 57092

General remarks and official action taken:

On this date came on for consideration by the Commissioner of Workers' Compensation, the matter of whether disciplinary action should be taken against Ace American Insurance Company ("Ace American"). The Texas Department of Insurance, Division of Workers' Compensation Staff ("Division Staff") alleges that Ace American violated the Texas Labor Code and that such conduct constitutes grounds for imposition of sanctions pursuant to TEX. LAB. CODE ANN. ch. 415.

Division Staff and Ace American announce that they have compromised and settled all claims and agree to the entry of this Consent Order. The parties request that the Commissioner of Workers' Compensation informally dispose of this case pursuant to TEX. GOV'T CODE ANN.

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§2001.056, TEX. LAB. CODE ANN. §§401.021 and 402.00128(b)(7), and 28 TEX. ADMIN. CODE § 180.8(h).

JURISDICTION

The Commissioner of Workers' Compensation has jurisdiction over this matter pursuant to TEX. LAB. CODE ANN. §§ 402.001, 402.00111, 402.00114, 402.00116, 402.00128, 413.014, 415.002, 415.021 and 28 TEX. ADMIN. CODE ANN. §§ 134.600, and TEX. GOV'T CODE ANN. §§ 2001.051-2001.178.

WAIVER

Ace American Insurance Company acknowledges the existence of certain rights provided by the Texas Labor Code and other applicable law, including the right to receive a written notice of possible administrative violations as provided for by TEX. LAB. CODE ANN. § 415.032, the right to request a hearing as provided for by TEX. LAB. CODE ANN. § 415.034, and the right to judicial review of the decision as provided for by TEX. LAB. CODE ANN. § 415.035. Ace American Insurance Company waives all of these rights, as well as any other procedural rights that might otherwise apply, in consideration of the entry of this Consent Order.

FINDINGS OF FACT

The Commissioner makes the following findings of fact:

System Participant

1. Ace American Insurance Company is a foreign property and casualty insurance company currently holding a certificate of authority issued by the Texas Department of Insurance on October 31, 1966, to transact the business of insurance pursuant to TEX. INS. CODE ANN. §§ 801.051-801.053, and is licensed to write multiple lines of insurance, including workers' compensation/employer's liability.

Responsibility to Pay for Preauthorized Medical Services

2. In accordance with 28 TEX. LAB. CODE ANN. § 413.014, the commissioner shall adopt rules which specify which health care treatments and services require preauthorization or concurrent review.
3. In accordance with 28 TEX. LAB. CODE ANN. § 413.014(f), the insurance carrier is liable for health care treatment and treatment plans and pharmaceutical services that are voluntarily preauthorized and may not dispute the certified or agreed-on preauthorized health care treatment and treatment plans and pharmaceutical services at a later date.
4. In accordance with 28 TEX. ADMIN. CODE § 134.600(c), an insurance carrier is liable for the reasonable and necessary medical costs relating to an emergency or treatments/services

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which require preauthorization if the insurance carrier gave preauthorization or voluntary certification prior to the services being provided.

5. In accordance with 28 TEX. ADMIN. CODE § 134.600(l), a carrier shall not withdraw an approval once issued.

Failure to Pay for Preauthorized Medical Services

6. Ace American failed to pay for preauthorized medical services for injured employee: A.D., Carrier No. 006430000091505001, Division Claim No. XXXX5867, CIS No. 812150, and CTS No. 52064.
 - a. On November 1, 2006 the carrier pre-authorized services for PSYC DX INTERVIEW XM for one visit and PSYCHOTHERAPY OFFICE 45-50 MIN for six visits. The pre-authorized services were for the period beginning October 23, 2006 through January 31, 2007. The health care provider (HCP) provided medical services to the injured employee beginning on October 30, 2006 through January 2, 2007.
 - b. The HCP submitted five properly completed medical bills dated November 29, 2006 through January 2, 2007, in the amount of \$686.01. In response, beginning December 4, 2007 through February 6, 2007, Ace American denied the services stating reason code "62-payment denied/reduced for absence of or exceeded, pre-certification/authorization."
 - c. This was not a sufficient reason for the denial because preauthorization was approved on November 1, 2006 for the services rendered.
7. Ace American failed to pay for medical services that were preauthorized, voluntarily certified, ordered, or provided as part of an emergency for injured employee: R.N., Carrier No. Y002628003786WC01, Division Claim No. XXXX6738, CIS No. 812615, and CTS No. 54538.
 - a. On April 21 through 22, 2007, the HCP provided emergency medical services to the injured employee.
 - b. The HCP submitted a properly completed medical bill for emergency services on April 30, 2007, in the amount \$2,765.00. In response, on May 8, 2007 and August 1, 2007, Ace American denied services stating "Service denied, Provider not on the Approved Doctor List".
 - c. This was not a sufficient reason for the denial as the services were provided as part of an emergency. Ace American later issued payment in the amount of \$1,090.58, on August 3, 2007.

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8. Ace American failed to timely pay for preauthorized medical services for injured employee: G.R., Carrier No. C135C670625X, Division Claim No. XXXX2161, CIS No. 796416, and CTS No. 53287.
 - a. On September 29, 2006, Ace American pre-authorized services for Individual Psychotherapy Lumbar 3xWk x 4Wks, 97110, 97112, 97039 for a total of (12) visits. The pre-authorized services were for the period beginning September 28, 2006 through November 30, 2006. The HCP provided medical services to the injured employee October 3, 2006 through February 28, 2007.
 - b. The HCP submitted a properly completed medical bill in the amount of \$3,735.00 on April 23, 2007. In response, on May 1, 2007, Ace American denied services with reason code "W-9 Unnecessary medical treatment based on a peer review".
 - c. This was not a sufficient reason for the denial because preauthorization was approved September 29, 2006. Ace American issued payment in the amount of \$3,344.85 on September 4, 2007.

9. Ace American failed to timely pay for preauthorized medical services for injured employee: P.W., Carrier No. WCTXMS2006008927, Division Claim No. XXXX3998, CIS No. 833269, and CTS No. 57091.
 - a. On September 06, 2007, the carrier pre-authorized services for INDIVIDUAL PSYCHOTHERAPY ONCE A WEEK FOR 6 (6 SESSIONS) APPROVED PE. The pre-authorized services were for the period beginning June 21, 2007 through September 21, 2007. In addition, the carrier pre-authorized services for INDIVIDUAL PSYCHOTHERAPY ONCE A WEEK FOR 6 (6 SESSIONS). The subsequent pre-authorized services were for the period beginning August 31, 2007 through November 29, 2007. The HCP provided medical services to the injured employee beginning August 14, 2007 through October 30, 2007.
 - b. The HCP submitted properly completed medical bills dated August 16, 2007 through November 1, 2007, totaling \$1,300.00. In response, on November 12, 2007, Ace American denied services stating "Unnecessary medical treatment based on Peer review".
 - c. This was not a sufficient reason for the denial because preauthorization was approved on September 6, 2007. Ace American later issued payment in the amount of \$340.95 on November 7, 2007 and \$910.10 on June 20, 2008.

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Responsibility to Timely Respond to the Requestor with a Decision to Approve or Deny the Preauthorization Request

10. In accordance with 28 TEX. ADMIN. CODE §134.600(i), the carrier is required to contact the requestor or employee by telephone, facsimile, or electronic transmission with the decision to approve or deny the request within three working days of receipt of a request for preauthorization.
11. In accordance with 28 TEX. ADMIN. CODE §134.600(j), the carrier is required to send written notification of the approval or denial of the request within one working day of the decision.

Failure to Timely Respond to the Requestor with a Decision to Approve or Deny the Preauthorization Request

12. Ace American failed to timely contact the requestor with a decision to approve or deny the preauthorized request for services for injured employee: R.S., Carrier No. 027940000040760001, Division Claim No. XXXX1777, CIS No. 825398, and CTS No. 57089.
 - a. On April 15, 2008, the HCP submitted a request for preauthorized services. The request was for additional physical therapy for the right shoulder for three times a week for six weeks, totaling eighteen visits.
 - b. The preauthorization request was received by the carrier on April 15, 2008. Ace American was required to respond within three working days or by April 19, 2008.
 - c. On April 23, 2008, Ace American authorized services for additional physical therapy for the right shoulder for three times a week for six weeks, totaling eighteen visits. The carrier's response was 4 days late.
13. Ace American failed to timely contact the requestor with a decision to approve or deny the preauthorized request for services for injured employee: R.D., Carrier No. 4650278418, Division Claim No. XXXX8088, CIS No. 828215, and CTS No. 57089.
 - a. On May 5, 2008, the HCP submitted a request for preauthorized services for occupational therapy three times a week for six weeks, 18 sessions to be provided to the injured employee.
 - b. The preauthorization request was received by the carrier on May 5, 2008. Ace American was required to respond within three working days or by May 10, 2008.

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- c. Ace American authorized services on May 13, 2008, for occupational therapy three times a week for six weeks, 18 sessions beginning May 6 through June 24, 2008. Ace American's response was 4 days late.

14. Ace American failed to timely contact the requestor with a decision to approve or deny the preauthorized request for services for injured employee: M.R., Carrier No. C498C0341154, Division Claim No. XXXX1584, CIS No. 843158, and CTS No. 57089.
 - a. On September 4, 2008, the HCP submitted a request for preauthorized services for physical therapy for the right ankle for three times a week for four weeks, totaling twelve visits.
 - b. The preauthorization request was received by the carrier on September 5, 2008. Ace American was required to respond within three working days or by September 7, 2008.
 - c. On September 18, 2008, Ace American authorized services for physical therapy for the right ankle for three times a week for four weeks, totaling twelve visits. Ace American's response was 8 days late.

15. Ace American failed to timely contact the requestor with a decision to approve or deny the preauthorized request for services for injured employee: D.M., Carrier No. 4650282369, Division Claim No. XXXX7249, CIS No. 844495, and CTS No. 57089.
 - a. October 1, 2008, the HCP submitted a request for preauthorized services for physical therapy three times a week for four weeks to lower back as outpatient.
 - b. The preauthorization request was received by the carrier on October 1, 2008. Ace American was required to respond within three working days or by October 6, 2008.
 - c. On October 9, 2009, Ace American authorized services for physical therapy three times a week for twelve weeks. Ace American's response was 3 days late.

Other Considerations

16. Ace American has agreed to submit to the Division a compliance plan to ensure timely initiation and continuation of indemnity benefit payments within 60 days of the date of the signing of this Order.

CONCLUSIONS OF LAW

Based upon the foregoing findings of fact, the Commissioner of Workers' Compensation makes the following conclusions of law:

1. The Commissioner of Workers' Compensation has jurisdiction over this matter pursuant to TEX. LAB. CODE ANN. §§ 402.001, 402.00111, 402.00114, 402.00116, 402.00128, 413.014, 415.002, 415.021, and 28 TEX. ADMIN. CODE ANN. §§ 134.600, 180.2, 180.7, 180.8, 180.10 and TEX. GOV'T CODE ANN. §§ 2001.051–2001.178.
2. The Commissioner of Workers' Compensation has authority to informally dispose of this matter as set forth herein under TEX. GOV'T CODE ANN. § 2001.056, TEX. LAB. CODE ANN. §§ 401.021 and 402.00128(b)(7), and 28 TEX. ADMIN. CODE § 180.8(h).
3. Ace American Insurance Company has knowingly and voluntarily waived all procedural rights to which they may have been entitled regarding the entry of this Order, including, but not limited to, written notice of possible administrative violations, a hearing, and judicial review.
4. In accordance with 28 TEX. LAB. CODE ANN. § 413.014(f), an insurance carrier is liable for health care treatment and treatment plans and pharmaceutical services that are voluntarily preauthorized and may not dispute the certified or agreed-on preauthorized health care treatment and treatment plans and pharmaceutical services at a later date.
5. In accordance with TEX. LAB. CODE ANN. § 415.021, the Commissioner of Workers' Compensation may assess an administrative penalty against a person who commits an administrative violation.
6. In accordance with TEX. LAB. CODE ANN. § 415.021, in addition to any other provisions in this subtitle relating to violations, a person commits an administrative violation if the person violates, fails to comply with, or refuses to comply with this subtitle or a rule, order, or decision of the commissioner.
 - a. Ace American Insurance Company violated 28 TEX. ADMIN. CODE § 134.600(c) by failing to pay for the reasonable and necessary medical costs relating to an emergency or treatments/services which require preauthorization when the insurance carrier gave preauthorization or voluntary certification prior to the services being provided.
 - b. Ace American Insurance Company violated 28 TEX. ADMIN. CODE § 134.600(i) by failing to timely respond to a request for preauthorization by contacting the requestor or employee by telephone, facsimile, or electronic transmission with the decision to approve or deny the request within three working days of receipt of a request for preauthorization.

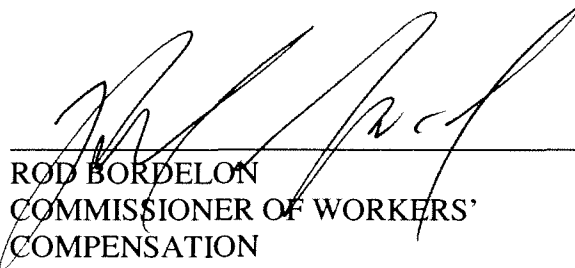
Based on the Findings of Fact and Conclusions of Law above, the Commissioner of Workers' Compensation has determined that the appropriate disposition is to order payment of an administrative penalty and full compliance with the terms of this Order.

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IT IS THEREFORE ORDERED that Ace American Insurance Company Insurance Company shall pay, and is hereby directed to pay, on or before thirty days from the date of this Order, an administrative penalty in the amount of SEVENTY FOUR THOUSAND DOLLARS AND NO CENTS (\$74,000.00). The payment must be paid by company check, cashier's check or money order made payable to the "State of Texas" and transmitted to the Texas Department of Insurance, Enforcement Division-DWC, Division 3721, MC-9999, P.O. Box 149104, Austin, Texas 78714-9104.

IT IS FURTHER ORDERED that Ace American shall submit to the Division, within 60 days of the date of the signing of this Order, a compliance plan to ensure timely initiation and continuation of indemnity benefit payments.

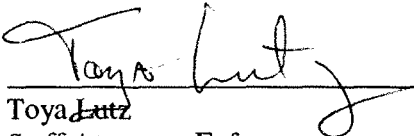
IT IS ALSO ORDERED by the Commissioner of Workers' Compensation that if Ace American Insurance Company fails to comply with the terms of this Order that Ace American Insurance Company will have committed an additional administrative violation and its failure to comply with the terms of this Order may subject Ace American Insurance Company to further penalties as authorized by the Texas Labor Code, which, pursuant to TEX. LAB. CODE ANN. § 415.021(a), includes the right to impose an administrative penalty of up to \$25,000 per day per occurrence.



ROD BORDELON
COMMISSIONER OF WORKERS'
COMPENSATION

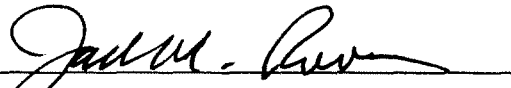
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FOR THE STAFF:



Toya Lutz
Staff Attorney, Enforcement
Texas Department of Insurance
Division of Workers' Compensation

AGREED, ACCEPTED, AND EXECUTED by Ace American Insurance Company on this, the
23 day of August, 2010.

By: 
Signature

VP Finance & Compliance
Title

Jack W. Rowan
Typed/Printed Name

RECEIVED
HAND DELIVERED
AUSTIN CENTRAL OFFICE

AUG 24 2010

TEXAS DEPARTMENT OF INSURANCE
DIVISION OF WORKERS' COMPENSATION

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STATE OF Delaware §
 COUNTY OF New Castle §

BEFORE ME, Bianca D. Penhollow, a notary public in and for the State of Delaware, on this day personally appeared Jack W. Rowan, known to me or proven to me through ACE USA Insurance to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that (he/she) executed the same for the purposes and consideration therein expressed, who being by me duly sworn, deposed as follows:

1. "My name is JACK W. ROWAN. I am of sound mind, capable of making this statement, and personally acquainted with the facts herein stated.
2. I hold the office of Vice President. I am an authorized representative of Ace American Insurance Company, which holds a Certificate of Authority to transact the business of insurance in the State of Texas, and I am duly authorized by said company to execute this statement.
3. Ace American Insurance Company has knowingly and voluntarily entered into this Consent Order and agrees with and consents to the issuance and service of the foregoing Consent Order by the Commissioner of Workers' Compensation in the State of Texas."

Jack W. Rowan
 Signature
JACK W. ROWAN
 Typed/Printed Name

Given under my hand and seal of office this 23rd day of August, 2010.

Bianca D. Penhollow
 Signature of Notary Public
Bianca D Penhollow
 Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF Delaware

My Commission Expires: _____

Bianca D. Penhollow
 My Commission Expires
 04/04/2013
 New Castle County, State of Delaware
 Notary Public

RECEIVED
 HAND DELIVERED
 AUSTIN CENTRAL OFFICE

AUG 24 2010

TEXAS DEPARTMENT OF INSURANCE
 DIVISION OF WORKERS' COMPENSATION