

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF WORKERS' COMPENSATION
BEFORE THE ADMINISTRATIVE DIRECTOR**

In Re:

ZURICH NORTH AMERICA
1400 American Lane
Schaumburg, IL 60196

Respondent

No. AD-IMR15-06

**ORDER TO SHOW CAUSE
RE: ASSESSMENT OF ADMINISTRATIVE PENALTY,
[Labor Code § 4610.5, 8 C.C.R. § 9792.12, 8 C.C.R. § 9792.15]**

JURISDICTION AND PARTIES

1. Zurich North America is a claims administrator as defined by California Code of Regulations, title 8 ("8 C.C.R."), section 9792.6.1(b).
2. Labor Code section 4610.5 provides that any dispute over a utilization review decision issued pursuant to Labor Code section 4610 must be resolved through the independent medical review (IMR) procedure as set forth in section 4610.5.
3. Labor Code section 4610.5(f) and 8 C.C.R. section 9792.9.1(e)(5) provide that a written decision modifying or denying a request for medical treatment must include an Application for Independent Medical Review, DWC Form IMR, with all fields of the form, except for the signature of the employee, to be completed by the claims administrator.
4. Labor Code section 4610.5(k) and 8 C.C.R. section 9792.10.3 provide that upon receipt of the Application for Independent Medical Review, the Administrative

1 Director shall determine whether the disputed medical treatment identified in the
2 application is eligible for IMR. 8 C.C.R. section 9792.6.1(h) defines “disputed medical
3 treatment” as medical treatment that has been modified, or denied by a utilization review
4 decision.

5 5. Labor Code section 4610.5(k) and 8 C.C.R. section 9792.10.4 provide that
6 upon finding that the disputed medical treatment is eligible for IMR, the Independent
7 Medical Review Organization delegated the responsibility by the Administrative Director
8 to conduct IMR pursuant to Labor Code section 139.5, currently Maximus Federal
9 Services, Inc. (“Maximus”), shall notify the claims administrator, employee, the
10 employee’s attorney, if the employee is represented by an attorney, and the physician
11 requesting the medical treatment in writing that the medical treatment dispute has been
12 assigned to that organization for IMR. The written notice sent by Maximus to the parties
13 in an IMR case is called the “Notice of Assignment and Request for Information”
14 (NOARFI).
15

16
17 6. 8 C.C.R. section 9792.10.4 provides that the NOARFI sent by Maximus to
18 the parties must include, for a regular review (i.e., one that does not require an expedited
19 review due to an injured workers’ serious health condition), a statement that within
20 fifteen (15) calendar days of the date designated on the NOARFI, Maximus must receive
21 from the claims administrator, all of the injured worker’s relevant medical records and
22 other categories of documents, listed in 8 C.C.R. section 9792.10.5.
23

24 7. 8 C.C.R. section 9792.10.5(a)(1) provides that within fifteen (15) days
25 following the mailing of the NOARFI, Maximus must receive from the claims
26 administrator all of the following documents:

27
28 (A) A copy of all reports of the physician relevant to the employee’s current
medical condition produced within six months prior to the date of the request for

1 authorization, including those that are specifically identified in the request for
2 authorization or in the utilization review determination. If the requesting physician
3 has treated the employee for less than six months prior to the date of the request
4 for authorization, the claims administrator shall provide a copy of all reports
5 relevant to the employee's current medical condition produced within the
6 described six month period by any prior treating physician or referring physician.

7 (B) A copy of the written Application for Independent Medical Review, DWC
8 Form IMR, that was included with the written determination, issued under section
9 9792.9.1(e)(5), which notified the employee that the disputed medical treatment
10 was denied, delayed or modified. Neither the written determination nor the
11 application's instructions should be included.

12 (C) Other than the written determination by the claims administrator issued under
13 section 9792.9.1(e)(5) , a copy of all information, including correspondence,
14 provided to the employee by the claims administrator concerning the utilization
15 review decision regarding the disputed treatment.

16 (D) A copy of any materials the employee or the employee's provider submitted to
17 the claims administrator in support of the request for the disputed medical
18 treatment.

19 (E) A copy of any other relevant documents or information used by the claims
20 administrator in determining whether the disputed treatment should have been
21 provided, and any statements by the claims administrator explaining the reasons
22 for the decision to deny, modify, or delay the recommended treatment on the basis
23 of medical necessity.

24 (F) The claims administrator's response to any additional issues raised in the
25 employee's application for independent medical review.

26 8. The NOARFI sent to the claims administrator, shall state that, pursuant to
27 Labor Code section 4610.5(i), in addition to any other fines, penalties, and other remedies
28 available to the Administrative Director, the failure to comply with 8 C.C.R. section
9792.10.5 could result in the assessment of administrative penalties up to \$5,000.00.

9. 8 C.C.R. section 9792.10.5(a)(2) provides that concurrently with the
claims administrator providing Maximus with the documents set forth under 8 C.C.R.
section 9792.10.(5)(a)(1), the claims administrator shall also forward to the employee or
the employee's representative, a notification that lists all of the documents submitted to
Maximus. With this notification, the claims administrator shall provide to the employee

1 or the employee's representative, copies of all documents that were not previously
2 provided to the employee or the employee's representative.*

3 10. Labor Code section 4610.5(i) provides that an employer shall not engage
4 in any conduct that has the effect of delaying IMR. Engaging in that conduct or failing to
5 promptly comply with any requirements of section 4610.5 is a violation of the section
6 and, in addition to any other fines, penalties, and other remedies available to the
7 Administrative Director, the employer shall be subject to an administrative penalty in an
8 amount determined pursuant to regulations, not to exceed five thousand dollars (\$5,000)
9 for each day that proper notification to the employee is delayed. For the purpose of
10 applying this section, "employer" means the employer, the insurer of an insured
11 employer, a claims administrator, or a utilization review organization, or other entity
12 acting on behalf of any of them. Labor Code section 4610.5(c)(4).
13

14 11. 8 C.C.R. section 9792.12(c)(6) provides that for a claims administrator's
15 failure to timely provide all information required by 8 C.C.R. section 9792.10.5(a), the
16 administrative penalty to be assessed is \$500.00 for each day the response is untimely up
17 to a maximum of \$5,000.00.
18

19 12. 8 C.C.R. section 9792.10.6(i) provides that upon receipt of credible
20 information that the claims administrator has failed to comply with its obligations under
21 the IMR requirements set forth in Labor Code sections 4610.5 or in sections 9792.6
22 through 9792.10.8, the Administrative Director shall, concurrent or subsequent to the
23 issuance of a final IMR determination issued by Maximus, issue an order to show cause
24 under section 9792.15 for the assessment of administrative penalties against the claims
25 administrator under section 9792.12(c).
26
27
28

1 **FACTUAL ALLEGATIONS**

2 13. The “injured workers,” listed in Attachment A, which is incorporated into
3 this Order to Show Cause, filed Applications for Independent Medical Review with
4 Maximus, seeking review of UR decision by the claims administrator, that denied a
5 request by the injured worker’s treating physician for medical treatment. The requests by
6 the injured workers were assigned the IMR Case Numbers listed in Attachment A.
7

8 14. The injured workers' IMR Applications named Zurich North America as
9 the claims administrator.

10 15. The injured workers’ Applications of Independent Medical review, as
11 listed by their names and IMR Case Numbers, in Attachment A, were deemed eligible for
12 review under Labor Code section 4610.5(k) and 8 C.C.R. section 9792.10.3.

13 16. Maximus sent via U.S. Mail a NOARFI to the claims administrator in each
14 of the IMR Case Numbers listed in Attachment A. This was the address listed by the
15 claims administrator on the IMR application for each of the injured workers. The
16 NOARFI listed the category of documents to be submitted by the claims administrator in
17 the case within 15 days of the date of the NOARFI and advised that the failure to submit
18 the documents would subject the claims administrator to an assessment of administrative
19 penalties.
20

21 17. In the IMR Case Numbers listed in attachment A, the claims administrator
22 did not submit the documents required by 8 C.C.R. section 9792.10.5(a) to Maximus, or
23 otherwise communicate with Maximus in response to the NOARFI, within 15 days from
24 the date of the NOARFI.
25

26 21. The claims administrator has failed to timely submit the documents
27 required by 8 C.C.R. section 9792.10.5(a) to Maximus for the IMR Case numbers listed
28 in Attachment A.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

The assessment of administrative penalties and compliance requirements would be based upon a showing that Zurich North America failed to comply with the requirements of 8 C.C.R. section 9792.10.5(a) by failing to timely submit the documents required by that section in the IMR Case numbers listed in Attachment A. In this matter, there are two hundred and twenty (220) violations by Zurich, as set forth in Attachment A. Total administrative penalties in this matter are one million, one-hundred thousand dollars (\$1,100,000.00).

19
20
21
22
23
24
25
26
27
28

Alternatively, within thirty calendar days, the claims administrator may file an answer as the respondent with the Administrative Director pursuant to California Code of Regulations, title 8, section 9792.15(d), to contest these violations and penalties and to request a hearing.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

Administrative Director, or a designee appointed by the Administrative Director, to show cause, if any they have, why the Administrative Director should not assess administrative penalties in the amount of five hundred dollars (\$500.00) for each day the response to each of the IMR Case numbers listed in Attachment A has been untimely, up to a maximum of five thousand dollars (\$5,000.00) under 8 C.C.R. section 9792.12(c)(6) and Labor Code 4610.5(i) for delaying IMR.

The assessment of administrative penalties and compliance requirements would be based upon a showing that Zurich failed to comply with the requirements of 8 C.C.R. section 9792.10.5(a) by failing to timely submit the documents required by that section in the IMR Case numbers listed in Attachment A. In this matter, there are two hundred and twenty (220) violations by Zurich, as set forth in Attachment A. Total administrative penalties in this matter are one million, one-hundred thousand dollars (\$1,100,000.00).

20
21
22
23
24
25
26
27
28

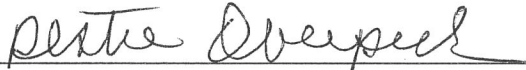
Pursuant to California Code of Regulations, title 8, sections 9792.11 and 9792.15, the claims administrator may stipulate to the allegations set forth in this Order to Show Cause and pay the assessed penalties within thirty calendar days after service of this Order to Show Cause.

Alternatively, within thirty calendar days, the claims administrator may file an answer as the respondent with the Administrative Director pursuant to California Code of Regulations, title 8, section 9792.15(d), to contest these violations and penalties and to request a hearing.

1 The claims administrator shall file and serve the original and copies of the
2 answer as required by California Code of Regulations, title 8, section 9792.15(g). The
3 address of the administrative director is: Administrative Director, Division of Workers'
4 Compensation, Department of Industrial Relations, 1515 Clay Street, 18th floor,
5 Oakland, California 94612. The address of the investigating unit is: Division of
6 Workers' Compensation, Legal Unit, Department of Industrial Relations, 1515 Clay
7 Street, 18th floor, Oakland, California 94612.
8

9 Within sixty calendar days of the issuance of the Order to Show Cause Re:
10 Assessment of Administrative Penalty, the Administrative Director shall issue the
11 notice of the time, date and place of hearing. The date of the hearing shall be at least
12 ninety calendar days from the date of the service of the notice. The notice shall be
13 served personally or by registered or certified mail. Continuances will not be allowed
14 without a showing of good cause.
15
16

17
18 Date: August 17, 2015


19 DESTIE OVERPECK
20 Administrative Director
21 Division of Workers' Compensation
22
23
24
25
26
27
28

PROOF OF SERVICE BY MAIL
(CCP 1013 (a), 2015.5)

I am employed in the City of Oakland, County of Alameda; I am over the age of eighteen years and not a party to the within entitled action; my business address is 1515 Clay Street, 18th Floor, Oakland, California 94612.

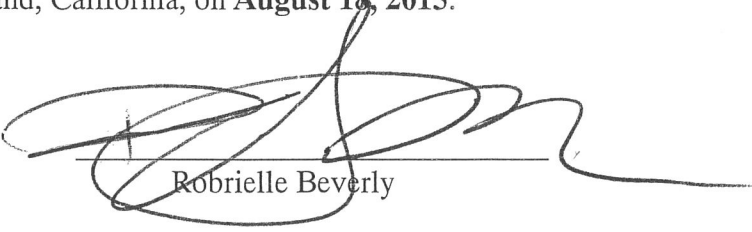
On **August 18, 2015**, I served the following document:

**ORDER TO SHOW CAUSE
RE: ASSESSMENT OF ADMINISTRATIVE PENALTY**

on the following parties appearing in this action by placing a true copy thereof enclosed in a sealed envelope with postage fully prepaid thereon, for delivery – certified mail – by the U.S. Postal Service, addressed as follows:

Sonai Desai, Team Manager
Claims Regulatory Operations
Zurich North America
1400 American Lane
Schaumburg, IL 60196-5452

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed at Oakland, California, on **August 18, 2015**.



Robrielle Beverly