

4318

No. \_\_\_\_\_

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

Date: FEB 23 2016

**Subject Considered:**

**STEPHEN IVOR ESSES, M.D.**  
6560 Fannin St., Ste. 1016  
Houston, TX 77030-2725

**CONSENT ORDER**  
TDI ENFORCEMENT FILE NO. 10244

**General remarks and official action taken:**

The commissioner of workers' compensation considers whether disciplinary action should be taken against Stephen Ivor Esses, M.D. (Dr. Esses).

**WAIVER**

Dr. Esses acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Dr. Esses 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 of workers' compensation makes the following findings of fact:

1. Dr. Esses is a health care provider who provides medical treatment and care to injured employees in the Texas workers' compensation system. Dr. Esses holds Texas Medical License No. J1656, which was issued on August 21, 1992.
2. Dr. Esses was classified as "high tier" in completeness and documentation of the DWC Form-73 and "average tier" in the MRI section of the 2013 Performance Based Oversight (PBO) assessments. Dr. Esses was not selected to be tiered in the 2007, 2009, 2011, or 2015 PBO assessments.

**Medical Quality Review No. 15-22 HCP**

3. The division, as authorized by TEX. LAB. CODE ANN. § 414.002, monitors system participants to determine compliance with the Texas Workers' Compensation Act and rules promulgated by the commissioner of workers' compensation.
4. The division's Medical Advisor, whose duties are defined in TEX. LAB. CODE ANN. § 413.0511, and Medical Quality Review Panel (MQRP), as established pursuant to TEX. LAB. CODE ANN. § 413.0512, conducted a medical quality review of seven cases where Dr. Esses treated injured employees. All of the injured employees were treated by Dr. Esses between 2007 and 2014.
5. Dr. Esses failed to maintain efficient utilization of health care by ordering Manual Muscle Testing (MMTs), and failing to document in his medical records the results of the MMTs or the manner in which they were incorporated into the injured employees' treatment plans.
6. Dr. Esses ordered MMTs that were not reasonable and/or medically necessary on each of the seven injured employees reviewed.
7. Dr. Esses over-utilized diagnostic tests that were inappropriate under the circumstances in all seven cases where he referred the injured employee for MMTs not supported by the medical record or evidence-based medicine criteria.
8. Dr. Esses referred all seven of the injured employees to obtain MMTs at almost every office visit to entities in which the division believes Dr. Esses had an undisclosed financial interest. Dr. Esses submitted a sworn affidavit that he has no financial interest in Insight Medical Diagnostics.

**CONCLUSIONS OF LAW**

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, 408.023, 408.0231, 408.025, 413.002, 413.041, 413.0511, 413.0512, 415.003, 415.021, and 415.0215; 28 TEX. ADMIN. CODE §§ 180.22, 180.24, and 180.26; 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 § 180.26(h).

3. Pursuant to TEX. LAB. CODE ANN. § 415.0215 and 28 TEX. ADMIN. CODE § 180.26, the commissioner may impose sanctions against a doctor who commits an administrative violation, including mandatory participation in training classes.
4. Pursuant to TEX. LAB. CODE ANN. § 415.021, in addition to any sanction, administrative penalty, or other remedy authorized by this subtitle, the commissioner of workers' compensation may assess an administrative penalty against a person who commits an administrative violation.
5. Pursuant to TEX. LAB. CODE ANN. § 408.025(c) and 28 § TEX. ADMIN. CODE 180.22(c)(2), the treating doctor is responsible for maintaining efficient utilization of health care.
6. Dr. Esses violated TEX. LAB. CODE ANN. § 408.025(c) and 28 TEX. ADMIN. CODE § 180.22(c)(2), each time he failed to maintain efficient utilization of health care.
7. Pursuant to TEX. LAB. CODE ANN. § 415.003(2), a health care provider commits an administrative violation if the person administers improper, unreasonable, or medically unnecessary treatment or services.
8. Dr. Esses violated TEX. LAB. CODE ANN. 415.003(2), each time he ordered Manual Muscle Tests that were improper, unreasonable, or medically unnecessary.
9. Pursuant to TEX. LAB. CODE ANN. § 408.0231(c)(3), one of the criteria for imposing sanctions on a doctor may include evidence from the medical records that the doctor's evaluations are substantially different from those the commissioner finds to be fair and reasonable.
10. Dr. Esses violated TEX. LAB. CODE ANN. § 408.0231(c)(3) by failing to document in his medical records the results of the MMTs or the manner in which they were incorporated into the injured employees' treatment plans.
11. Pursuant to TEX. LAB. CODE ANN. § 415.003(3), a health care provider commits an administrative violation if the person makes an unnecessary referral.
12. Dr. Esses violated TEX. LAB. CODE ANN. § 415.003(3) each time he made unnecessary referrals.
13. Pursuant to TEX. LAB. CODE ANN. § 413.041(a) and TEX. ADMIN. CODE § 180.24, each health care practitioner shall disclose to the division the identity of any health care provider in which the health care practitioner, or the health care provider that employs the health care practitioner, has a financial interest.

14. Dr. Esses violated TEX. LAB. CODE ANN. § 413.041(a) and TEX. ADMIN. CODE § 180.24, each time he referred injured employees to medical facilities in which he had an undisclosed financial interest.


**ORDER**

Stephen Ivor Esses, M.D., is ORDERED to cease and desist from routine referring, performing, or billing for computerized muscle testing or range of motion testing as a separate billable service.

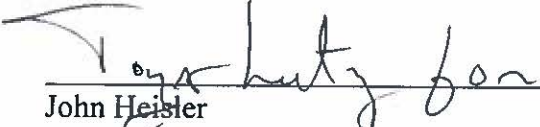
Stephen Ivor Esses, M.D., is FURTHER ORDERED to complete six (6) hours of continuing medical education (CME) in the area of Medical Record Keeping and Documentation and four (4) hours of Ethics, either in person or online, within 180 days following the consent order date. Dr. Esses must submit a certificate demonstrating completion of each course to the division within 15 days following the date of completion of the courses. The certificate shall be sent to the Texas Department of Insurance, ATTN: Catherine Bell, Compliance Division, MC-110-1A, P.O. Box 149104, Austin, Texas 78714-9104.

Stephen Ivor Esses, M.D., is also ORDERED to pay a \$35,000 administrative penalty. Payment is due within 30 days from the date of this Order. Payment must be paid by company check, cashier's check, or money order made payable to the "State of Texas" and mailed to the Texas Department of Insurance, Compliance Division-DWC, MC-9999, P.O. Box 149104, Austin, Texas 78714-9104.

Stephen Ivor Esses, M.D., also AGREES that billing data will be monitored by the division when Dr. Esses refers, performs, or bills for computerized muscle testing or range of motion testing.

  
\_\_\_\_\_  
W. Ryan Brannan  
Commissioner of Workers' Compensation 

Approved as to Form and Content:

  
\_\_\_\_\_  
John Heisler  
Staff Attorney, Compliance Division  
Texas Department of Insurance

