

No. 2020 6233

Confidential Information Redacted
Texas Labor Code §§402.083 & 402.092

OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF WORKERS' COMPENSATION

Date: FEB 12 2020

Subject Considered:

US ANESTHESIA PARTNERS OF TEXAS
P.O. BOX 660267
Dallas, Texas 75266-0267

CONSENT ORDER
TDI-DWC ENFORCEMENT FILE NO. 17462

General remarks and official action taken:

The commissioner of workers' compensation (commissioner) considers whether disciplinary action should be taken against US Anesthesia Partners of Texas (US Anesthesia).

WAIVER

US Anesthesia acknowledges that the Texas Labor Code and other applicable laws provide certain rights. US Anesthesia 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 makes the following findings of fact:

1. US Anesthesia is a health care facility operating within the Texas workers' compensation system.

**IMPROPERLY PURSUING A PRIVATE CLAIM AGAINST
AN INJURED EMPLOYEE**

2. US Anesthesia provided health care services to an injured employee on [REDACTED], in connection with a workers' compensation injury.
3. On [REDACTED], and [REDACTED], US Anesthesia billed the injured employee for the health care services provided on [REDACTED].
4. US Anesthesia knew the injury was related to a workers' compensation claim because on [REDACTED], US Anesthesia received a letter from the Texas Department of Insurance, Division of Workers' Compensation (DWC) advising it of the same and directing it to cease billing the injured employee.

5. No finding had been made determining that the injured employee violated TEX. LAB. CODE § 408.022 in selecting a treating doctor, nor had there been a final adjudication that the claim is not compensable.

ASSESSMENT OF SANCTION

6. Improperly billing an injured employee for health care services imposes an undue financial burden on the injured employee and circumvents the Texas workers' compensation system and the roles of its system participants.
7. In assessing the sanction for this case, DWC appropriately and fully considered the following factors set forth 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 demonstrated good faith of the violator, including actions taken to rectify the consequences of the prohibited act;
 - the penalty necessary to deter future violations;
 - whether the administrative violation has negative impact on the delivery of benefits to an injured employee;
 - the history of compliance with electronic data interchange requirements;
 - other matters that justice may require, including but not limited to:
 - Performance Base Oversight assessments;
 - the promptness and earnestness of 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; and
 - to the extent reasonable, the economic benefit resulting from the prohibited act.
8. In assessing the sanction for this case, DWC found the following factors set forth 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 penalty necessary to deter future violations; and other matters that justice may require, including but not limited to, the promptness and earnestness of actions to prevent future violations.
9. In assessing the sanction for this case, 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; and the demonstrated good faith of the violator, including actions taken to rectify the consequences of the prohibited act.
10. US Anesthesia acknowledges that it has communicated with DWC regarding the relevant statutes and rules violated; the facts establishing that the administrative violation occurred;

and the appropriateness of the proposed sanction, including how DWC considered the factors under TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e).

11. US Anesthesia acknowledges that, in assessing the sanction, DWC considered the factors set forth in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e).

CONCLUSIONS OF LAW


The commissioner makes the following conclusions of law:

1. The commissioner has jurisdiction over this matter pursuant to TEX. LAB. CODE §§ 402.001, 402.00111, 402.00114, 402.00116, and 402.00128.
2. The commissioner has authority to informally dispose of this matter as set forth under TEX. GOV'T CODE § 2001.056, TEX. LAB. CODE § 402.00128(b)(7), and 28 TEX. ADMIN. CODE § 180.26(h).
3. Pursuant to TEX. LAB. CODE § 415.021, the commissioner may assess an administrative penalty against a person who commits an administrative violation.
4. Pursuant to TEX. LAB. CODE § 415.003(6), a health care provider commits an administrative violation if it fails to comply with a provision of the Texas Workers' Compensation Act.
5. Pursuant to TEX. LAB. CODE § 413.042, a health care provider commits an administrative violation if it pursues a private claim against a workers' compensation claimant for all or part of the cost of a health care service provided to the injured employee by the provider unless the injury is finally adjudicated as not compensable or the employee violates TEX. LAB. CODE § 408.022 relating to the selection of a doctor.
6. US Anesthesia violated TEX. LAB. CODE §§ 413.042 and 415.003(6), when it improperly billed an injured employee for workers' compensation health care services provided.

ORDER

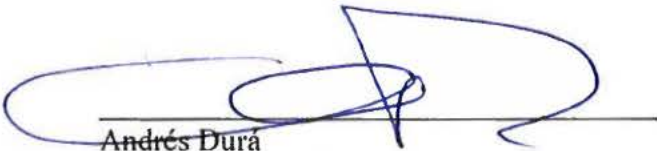
US Anesthesia Partners of Texas is ORDERED to pay an administrative penalty of \$4,500 within 30 days from the date of this Order.

The administrative penalty must be paid by company check, cashier's check, or money order made payable to the "State of Texas." Mail the administrative penalty to the Texas Department of Insurance, Attn: DWC Enforcement, MC 9999, P.O. Box 149104, Austin, Texas, 78714-9104.



Cassie Brown
Commissioner of Workers' Compensation

Approved as to Form and Content:



Andrés Durá
Staff Attorney, DWC Enforcement
Texas Department of Insurance

AFFIDAVIT

STATE OF Texas §
COUNTY OF Dallas §

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

"My name is Michael Friguiletto. 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 President, and am the authorized representative of US Anesthesia Partners of Texas. I am duly authorized by said organization to execute this statement.

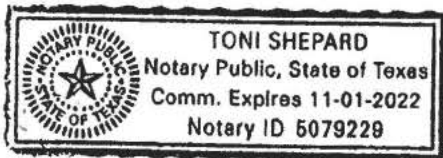
US Anesthesia Partners of Texas waives rights provided by the Texas Labor Code and other applicable laws, and acknowledges the jurisdiction of the Texas commissioner of workers' compensation.

US Anesthesia Partners of Texas is voluntarily entering into this consent order. US Anesthesia Partners of Texas consents to the issuance and service of this consent order."

[Signature]
Affiant

SWORN TO AND SUBSCRIBED before me on January 27, 2020.

(NOTARY SEAL)



[Signature]
Signature of Notary Public

toni shepard
Printed Name of Notary Public

11-01-2022
My Commission Expires