

No. 2023-8167

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

Date: 8/31/2023

Subject Considered:

Benjamin Maurice Meshack, D.C.
9800 Richmond Avenue, Suite 200
Houston, Texas 77042-4521

Consent Order
DWC Enforcement File No. 31678

General remarks and official action taken:

This is a consent order with Benjamin Maurice Meshack, D.C. (Respondent). The commissioner of the Texas Department of Insurance, Division of Workers' Compensation (DWC) considers whether DWC should take disciplinary action against Respondent.

Waiver

Respondent acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Respondent 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. On Jan. 6, 2011, the Texas Board of Chiropractor Examiners issued Chiropractic License No. 11658 to Respondent.
2. Respondent is a designated doctor (DD) in the Texas workers' compensation system. Respondent was first certified as a DD on July 11, 2018. Respondent was first certified to rate maximum medical improvement (MMI) and assign impairment ratings (IRs) on May 12, 2018. Respondent's certification as a DD and to rate MMI and assign IRs will expire on Dec. 31, 2024.

3. Respondent was classified as "poor" tier in the 2021_69 Performance Based Oversight (PBO) assessment. Respondent was not selected to be tiered in any other PBO assessments.

Failure to Attend a DD Examination and Properly Reschedule the DD Examination

4. On [REDACTED] DWC issued a Commissioner's Order for DD Examination.
5. DWC ordered Respondent to perform a DD examination of the injured employee on [REDACTED]. Respondent failed to appear to the examination and did not attempt to reschedule the DD examination within one working day prior to the examination.
6. On [REDACTED] Respondent informed the injured employee that the DD examination was rescheduled for [REDACTED]. There is no evidence that the date was mutually agreed on by Respondent or the injured employee.
7. On [REDACTED] the injured employee appeared for the examination as scheduled. Respondent failed to appear for the examination.
8. On [REDACTED] Respondent designated the injured employee as a "no show" for the [REDACTED] DD examination.
9. On [REDACTED] Respondent finally performed the DD examination.

Assessment of Sanction

1. Failure to attend a DD examination without good cause unnecessarily delays the resolution of medical disputes and the injured employee's ability to obtain necessary medical treatment in a timely manner. It also unnecessarily prevents an injured employee's ability to receive income benefits in a timely and cost-effective manner, which is harmful to injured employees and the Texas workers' compensation system.
2. The examinations and reports from a DD have significant consequences on workers' compensation claims, the benefits of injured employees, and the Texas workers' compensation system. DWC relies on DDs to comply with the rules to provide a fair and accessible dispute resolution process.

3. 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 electronic data interchange (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.
4. 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; the penalty necessary to deter future violations; whether the administrative violation had a negative impact on the delivery of benefits to an injured employee; and other matters that justice may require such as the 2021 PBO assessment of "poor."
5. DWC considered the following mitigating factor pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e): no history of administrative violations; and good faith attempts to contact the patient to schedule; and that Respondent required air travel to attend the DD examination.
6. Respondent acknowledges communicating with DWC about the relevant statute and rule violations alleged; that the facts establish that the administrative violation(s) occurred; and that 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).

7. Respondent 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 §§ 401.021, 402.001, 402.00111, 402.00114, 402.00116, 402.00128, 408.0041, 408.1225, 413.002, 413.044, 413.0511, 413.0512, 414.002, 415.021, and 415.0215; 28 Tex. Admin. Code § 180.26; and Tex. Gov't Code §§ 2001.051-2001.178.
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, 402.00128(b)(6)-(7), and 415.034; and 28 Tex. Admin. Code § 180.26(h) and (i).
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(5), a health care provider commits an administrative violation each time the person violates a DWC rule.

Failure to Attend a DD Examination

5. Pursuant to 28 Tex. Admin. Code § 127.210(a)(3), a DD must attend a DD examination.
6. Respondent violated Tex. Lab. Code § 415.003(5) and 28 Tex. Admin. Code § 127.210(a)(3) when Respondent failed to attend a scheduled DD examination for the injured employee.

Failure to Properly Reschedule the DD Examination


7. Pursuant to 28 Tex. Admin. Code § 127.5(h), the DD's office and the injured employee must contact each other if a scheduling conflict exists for the DD appointment and must mutually agree to reschedule within one working day before the appointment.

8. Pursuant to 28 Tex. Admin. Code § 127.5(h)(1)-(5), the DD is required to maintain and document the date and time of the DD examination on DWC's order; the date and time of the agreement to reschedule with the injured employee; how the DD made contact to reschedule by including the telephone, fax, or email address used to make contact; the reason for the scheduling conflict; and the date and time of the rescheduled DD examination.
9. Pursuant to 28 Tex. Admin. Code § 127.5(i), the failure to document and maintain the information in subsection (h) of this section creates a rebuttable presumption that the examination was rescheduled without mutual agreement of the designated doctor and injured employee.
10. Respondent violated Tex. Lab. Code § 415.003(5) and 28 Tex. Admin. Code § 127.5(i) by failing to timely reschedule the DD examination and failing to receive the injured employee's consent before rescheduling.

Order

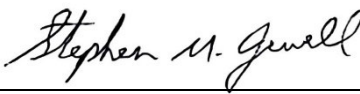
It is ordered that Benjamin Maurice Meshack, D.C. must pay an administrative penalty of \$750.00 within 30 days from the date the Commissioner signs the order.

After receiving an invoice, Respondent must pay the administrative penalty by electronic transfer using the State Invoice Payment Service, 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, PO Box 12030, Austin, Texas 78711-2030.



Jeff Nelson
Commissioner
TDI, Division of Workers' Compensation

Approved Form and Content:



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

Unsworn Declaration

STATE OF Texas §

§

COUNTY OF Harris §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is:
Benjamin Maurice Meshack. My license
number _____

(First) (Middle) (Last)
is 11658, which was issued by the Texas Board of Chiropractic Examiners
(Licensing agency/board/entity)

My business address is:
9800 Richmond Ave. Ste 200, Houston, Harris, TX, 77042.
(Street) (City) (County) (State) (ZIP Code)

I am executing this declaration as part of my assigned duties and responsibilities. I declare under penalty of perjury that the facts stated in this document are true and correct.

Benji Maurice Meshack, DC
Declarant

Executed on August 30, 2023.