

No. **2022-7221**

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

Date: 2/10/2022

Subject Considered:

Zynex Medical Incorporated
PO Box 840932
Dallas, Texas 75284-0932

Consent Order
DWC Enforcement File No. 28180

General remarks and official action taken:

This is a consent order with Zynex Medical Incorporated (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. Respondent is a health care provider operating within the Texas workers' compensation system.
2. Respondent was not selected to be tiered in the 2007, 2009, 2010, 2012, 2014, 2016, 2018, or 2020 Performance Based Oversight assessments.

Failure to Timely Comply with a DWC Order to Produce Documents

3. On [REDACTED] DWC ordered Respondent to produce documents regarding the following dates of service: [REDACTED] and [REDACTED]. Respondent was ordered to produce the following: copy of the refund check in the amount of [REDACTED] for the above-mentioned dates of service.
4. On [REDACTED] Respondent received the order to produce and was required to produce the requested documents by [REDACTED]. Respondent produced the requested documents on [REDACTED] or 18 days late.

Assessment of Sanction

1. Timely submitting information to DWC and complying with DWC orders is imperative to DWC's ability to implement and enforce the Texas Workers' Compensation Act.
2. 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 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.
3. 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; the history and extent of previous administrative violations; whether the administrative violation had a negative impact on the delivery of benefits to an injured employee; and the penalty necessary to deter future violations.
 4. DWC found the following factors 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. This was Respondent's first administrative violation and there was internal confusion concerning which departments were required to answer the request. Also, the payments were affected due to unexpected circumstances caused by the pandemic.
 5. 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).
 6. 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 §§ 402.001, 402.00114, 402.00116, 402.00128, 414.002, and 414.003.
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 and 402.00128(b)(6)-(7), and 28 TEX. ADMIN. CODE § 180.26(h) and (i).
3. Respondent has knowingly and voluntarily waived all procedural rights to which it may have been entitled regarding the entry of this order, including, but not limited to, issuance and service of notice of intent to institute disciplinary action, notice of

hearing, a public hearing, a proposal for decision, a rehearing by the commissioner, and judicial review.

4. Pursuant to TEX. LAB. CODE § 415.021, the commissioner may assess an administrative penalty against a person who commits an administrative violation.
5. Pursuant to TEX. LAB. CODE §§ 415.0035(e) and 415.021(a), a person regulated by DWC under this title commits an administrative violation if they violate the Texas Workers' Compensation Act, a DWC rule, or a commissioner's order or decision.
6. Pursuant to 28 TEX. ADMIN. CODE § 102.9, DWC requires those subject to the Texas Workers' Compensation Act to provide information as necessary. DWC may follow up on a request for information by issuing an order to produce information.
7. Respondent violated TEX. LAB. CODE §§ 415.0035(e) and 415.021(a) and 28 TEX. ADMIN. CODE § 102.9 when it failed to comply with a DWC order to produce documents.

Order

It is ordered that Zynex Medical Incorporated must pay an administrative penalty of \$5,000 within 30 days from the date of this order. Zynex Medical Incorporated must pay the administrative penalty by 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, P.O. Box 12030, Austin, Texas 78711-2030.



Dan Paschal, J.D.
Deputy Commissioner
Policy & Customer Services
TDI, Division of Workers' Compensation

Approved Form and Content:



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

Unsworn Declaration

STATE OF Colorado §
§
COUNTY OF Arapahoe §

Pursuant to the TEX. CIV. PRAC. AND REM. CODE § 132.001(a), (b), and (d), my name is Francisco Ortiz. I hold the position of Billing Manager and am the authorized representative of Zynex Medical Incorporated. My business address is:

9655 Maroon Circle, Englewood, Arapahoe, CO, 80112
(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.


Declarant

Executed on February 9, 2022.