

No. **2022-7350**

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

Date: 6/22/2022

Subject Considered:

Michael A. Flores, M.D.
102 N. Salinas Blvd. Suite B
Donna, Texas 78537-2926

Consent Order
DWC Enforcement File No. 17410

General remarks and official action taken:

This is a consent order with Michael A. Flores, M.D. (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 October 10, 2003, Respondent was licensed as a physician by the Texas Medical Board under License No. L7377.
2. Respondent was not classified in the 2007, 2009, 2011, 2013, 2015, 2017, 2019, or 2021 Performance Based Oversight (PBO) assessments.

Medical Quality Review (MQR) No. 18-36 HCP

3. On [REDACTED] DWC initiated MQR No. 18-36 HCP to determine whether Respondent complied with the Texas Labor Code and DWC rules regarding the medical necessity of orders for Magnetic Resonance Imaging (MRI) of the lumbar spine in cases involving lumbar injury.
4. Respondent ordered MRI of the lumbar spine without adequate medical justification in 100% of the cases evaluated (10 out of 10 cases).
5. Specifically, the medical evidence failed to show that the injured employees had received at least one month of conservative therapy prior to Respondent's orders for MRI, and Respondent failed to document other adequate medical justification to deviate from the Official Disability Guideline—Treatment in Workers' Comp (ODG) in 100% of the cases evaluated.

Assessment Of Sanction

1. Ordering or performing medically unnecessary tests places an emotional, physical, and financial burden on injured employees and imposes significant additional costs on the Texas workers' compensation system.
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):
 - a. the seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the prohibited act;
 - b. the history and extent of previous administrative violations;
 - c. the violator's demonstration of good faith, including actions it took to rectify the consequences of the prohibited act;
 - d. the penalty necessary to deter future violations;
 - e. whether the administrative violation had a negative impact on the delivery of benefits to an injured employee;
 - f. the history of compliance with electronic data interchange (EDI) requirements;
 - g. to the extent reasonable, the economic benefit resulting from the prohibited act; and
 - h. other matters that justice may require, including, but not limited to:

- i. PBO assessments;
 - ii. prompt and earnest actions to prevent future violations;
 - iii. self-report of the violation;
 - iv. the size of the company or practice;
 - v. the effect of a sanction on the availability of health care; and
 - vi. evidence of heightened awareness of the legal duty to comply with the Texas Workers' Compensation Act and DWC rules.
3. In assessing the sanction for this case, 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; and other matters that justice may require including the penalty necessary to deter future violations.
4. DWC is aware of no mitigating factors pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e).
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).

Conclusions of Law

1. The commissioner has jurisdiction over this matter pursuant to Tex. Lab. Code §§ 402.001, 402.00114, 402.00116, 402.00128, 413.002, 413.0511, 413.0512, 414.002, 414.003, 415.021, and 415.0215.
2. The commissioner has the authority to dispose of this case informally pursuant to: Tex. Lab. Code §§ 401.021, 402.00128; 28 Tex. Admin. Code §§ 180.26 (h) and (i); and Tex. Gov't Code § 2001.056.
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.

Confidential Information Redacted
Texas Labor Code §§402.083 and 402.092

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 § 408.0231(c)(3), the commissioner may impose additional sanctions, including mandatory participation in training classes, against a health care provider who commits a violation of Chapters 413 or 415 of the Texas Labor Code.
6. Pursuant to 28 Tex. Admin. Code § 180.22(c)(2), the treating doctor is responsible for the efficient utilization and management of health care.
7. Pursuant to Tex. Lab. Code § 415.003, a health care provider commits an administrative violation if the person administers improper, unreasonable, or medically unnecessary treatment or services; makes an unnecessary referral; violates a commissioner rule; or, fails to comply with a provision of the Texas Labor Code.
8. Pursuant to 28 Tex. Admin. Code § 137.100, a health care provider shall provide treatment in accordance with the current edition of the ODG. Health care provided in accordance with the ODG is presumed reasonably required, as defined in Tex. Lab. Code § 401.011(22-a).
9. Respondent violated Tex. Lab. Code § 415.003 and 28 Tex. Admin. Code § 137.100 each time he administered improper, unreasonable, or medically unnecessary treatment or services by ordering medical unnecessary MRI of the lumbar spine.

Order

It is ordered that Michael A. Flores, M.D., must:

1. Pay an administrative penalty of \$3,500 within 30 days from the date of this order. The administrative penalty must be paid by company check, cashier's check, or money order and make it payable to the "State of Texas." Mail the administrative penalty to the Texas Department of Insurance, Attn: DWC Enforcement, MC AO-9999, P.O. Box 12030, Austin, Texas, 78711-2030.
2. Purchase and maintain a current subscription to the Official Disability Guidelines-Treatment in the Workers' Comp, published by Work Loss Data Institute, for one year following the date of this Order. Confirmation of purchase of a subscription to the current ODG must be provided to DWC with 14 days of the date of this Order. Mail confirmation to the Texas Department of Insurance, Attn: DWC Enforcement Section, MC-CI, P.O. Box 12050, Austin, Texas 78711-2050.
3. Attend and complete the Medical Record Keeping Seminar offered by the Center for Personalized Education for Professionals (CPEP) within 180 days from the date of this Order. Confirmation of the attendance and completion of the workshop must be provided to DWC within 14 days of completion. Mail confirmation of course completion to the Texas Department of Insurance, Attn: DWC Enforcement Section, MC-CI, P.O. Box 12050, Austin, Texas 78711-2050.



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

Approved Form and Content:



Veronica L. Ruberto
Lead Attorney, Enforcement
Compliance and Investigations
TDI, Division of Workers' Compensation

Unsworn Declaration

STATE OF TEXAS §
§
COUNTY OF HIDALGO §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is Michael A. Flores MD. I hold the position of Physician and am the authorized representative of Michael A. Flores, M.D. My business address is:
102 N. Salinas Blvd. Ste B Daoud Hidalgo TX 79137
(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.

Michael A. Flores MD.
Declarant

Executed on 6/7/2022, 2022.