

No. **2019 6091**

Confidential Information Redacted
Texas Labor Code §§402.083 & 402.092

OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF WORKERS' COMPENSATION

Date: **SEP 27 2019**

Subject Considered:

AUSTIN TRAVIS COUNTY EMS
15 Waller Street, Floor 2
Austin, Texas 78702-5240

CONSENT ORDER
TDI-DWC ENFORCEMENT FILE NO. 20937

General remarks and official action taken:

The commissioner of workers' compensation (commissioner) considers whether disciplinary action should be taken against Austin Travis County EMS (Austin EMS).

WAIVER

Austin EMS acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Austin EMS 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. Austin EMS is a health care provider operating within the Texas workers' compensation system.
2. Austin EMS was not selected to be tiered in the 2007, 2009, 2011, 2013, 2015, or 2017 Performance Based Oversight (PBO) assessments.

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

3. Austin EMS provided services to the injured employee on [REDACTED] in connection with a workers' compensation injury.
4. Austin EMS sent a bill on [REDACTED] in the amount of \$ [REDACTED] to the injured employee for health care services it provided to the injured employee.

5. The Texas Department of Insurance, Division of Workers' Compensation (DWC) sent a letter on [REDACTED], informing Austin EMS that the bill sent to the injured employee was for services related to a workers' compensation claim and that it should immediately cease billing the injured employee and instead bill the insurance carrier.
6. Austin EMS sent a bill on [REDACTED] in the amount of \$[REDACTED] to the injured employee for health care services it provided to the injured employee.
7. No finding had been made determining that the injured employee had violated TEX. LAB. CODE § 408.022 in selecting a treating doctor, nor had there been a final adjudication that the claim was not compensable.

ASSESSMENT OF SANCTION

8. 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.
9. 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:
 - PBO 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.
10. 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.

11. 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: respondent does not have a history of violations; and the demonstrated good faith of the violator, including actions taken to rectify the consequences of the prohibited act, as the healthcare provider has enacted a follow-up process to check for errors and discrepancies.
12. Austin EMS 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).
13. Austin EMS 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:

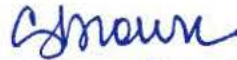
1. The commissioner has jurisdiction over this matter pursuant to TEX. LAB. CODE §§ 402.001, 402.00111, 402.00114, 402.00116, 402.00128, 414.002, 414.003, 415.002, and 415.021.
2. The commissioner has authority to informally dispose of this matter as set forth under TEX. GOV'T CODE § 2001.056, TEX. LAB. 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 treating doctor.
6. Austin EMS violated TEX. LAB. CODE §§ 413.042 and 415.003(6), when it improperly billed an injured employee for workers' compensation health care services provided.

2019 6091

ORDER

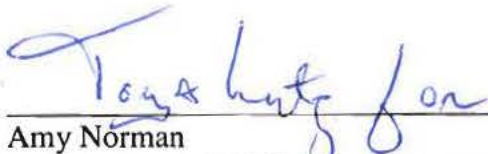
Austin Travis County EMS is ORDERED to pay an administrative penalty of \$2,500 within 30 days from the date of this Order.

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:



Amy Norman
Staff Attorney, DWC Enforcement
Texas Department of Insurance

