No. **2022-7329**

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

Date: 5/23/2022

Subject Considered:

William R. Francis Jr., M.D.
9200 New Trails Drive, Suite 100
The Woodlands, Texas 77381-5257

Consent Order
DWC Enforcement File No. 17813

General remarks and official action taken:

This is a consent order with William R. Francis Jr, 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.
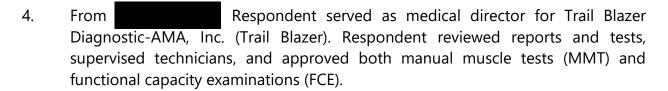
Waiver

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.   Respondent holds License No. ███████ which was issued by the Texas Medical Board
      on ███████████.

2.   Respondent is a health care provider in the Texas workers' compensation system.

3.   Respondent was not selected to be tiered in the 2007, 2009, 2011, 2013, 2015,
      2017, or 2019 Performance Based Oversight (PBO) assessments.

Billing for Services Not Supervised

4.   From ▮▮▮▮▮▮▮▮ Respondent served as medical director for Trail Blazer Diagnostic-AMA, Inc. (Trail Blazer). Respondent reviewed reports and tests, supervised technicians, and approved both manual muscle tests (MMT) and functional capacity examinations (FCE).

5.   As medical director for Trail Blazer, Respondent signed, certified, and submitted numerous MMTs and FCEs under his medical license number. Respondent admitted he was not in the room and did not supervise the technicians performing these examinations.

6.   Respondent authorized billing for the MMTs and FCEs, using his license number on the Centers for Medicare and Medicaid Services 1500 Health Insurance Claim Forms (CMS-1500 form). The bills submitted used American Medical Association Current Procedural Terminology (CPT) codes 95831, 95832, and 95834 for MMT examinations and CPT code 97750 for FCEs.

7.   Medicare does not permit a health care practitioner to delegate examinations billed under CPT codes 95831, 95832, 95834, and 97750. The health care practitioner must conduct the examinations.

8.   Between ▮▮▮▮▮▮▮ and ▮▮▮▮▮▮▮ Respondent authorized 6,487 MMTs and FCEs where Respondent entered his National Provider Identifier number as the rendering provider in box 24 J of the CMS-1500 forms. However, Respondent did not actually render the health care for the MMTs and FCEs.

9.   Respondent billed ▮▮▮▮▮▮ and received ▮▮▮▮▮▮ for the MMTs and FCEs.

10.   Respondent received ▮▮▮▮ per month in his role as medical director.

Assessment of Sanction

1.   Failure to provide appropriate medical benefits and appropriate bills in a timely and cost-effective manner is harmful to injured employees and 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):

- 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:
  - o PBO assessments;
  - o prompt and earnest actions to prevent future violations;
  - o self-report of the violation;
  - o the size of the company or practice;
  - o the effect of a sanction on the availability of health care; and
  - o 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, including the nature, circumstances, consequences, extent, and gravity of the prohibited act; to the extent reasonable, the economic benefit resulting from the prohibited act; and 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).

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 §§ 401.021, 402.001, 402.00111, 402.00114, 402.00116, 402.00128, 408.0041, 408.1225, 413.002, 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 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 he 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 § 408.0231(c)(3), one of the criteria for imposing sanctions on a doctor may include evidence from the medical records that the doctor's evaluations are, to a large extent, different from those the commissioner finds to be fair and reasonable.

6. Pursuant to TEX. LAB. CODE § 408.0231(f)(7), the commissioner may impose sanctions against a doctor who commits an administrative violation, including mandatory participation in training classes.

7. Pursuant to TEX. LAB. CODE § 415.003(1), a health care provider commits an administrative violation if they submit a charge for health care that was not furnished.

8. Pursuant to TEX. LAB. CODE § 415.003(5), a health care provider commits an administrative violation if they violate a DWC rule.

9.   Pursuant to TEX. LAB. CODE § 415.003(6), a health care provider commits an administrative violation if they fail to comply with a provision of the Texas Workers' Compensation Act.

10.   Pursuant to 28 TEX. ADMIN. CODE § 134.203(a)(7), specific provisions contained in the Texas Labor Code or DWC rules, including this chapter, will take precedence over any conflicting provision adopted or used by CMS in administering the Medicare program.

11.   Pursuant to 28 TEX. ADMIN. CODE § 134.203(b)(1), for coding, billing, reporting, and reimbursement of professional medical services, Texas workers' compensation system participants must apply Medicare payment policies, including its coding, billing, correct coding initiatives edits, modifiers, bonus payments for health professional shortage areas and physician scarcity areas, and other payment policies in effect on the date a service is provided with any additions or exceptions in the rules.

12.   Pursuant to 28 TEX. ADMIN. CODE § 134.204(b), health care providers must bill their usual and customary charges using the most current Level 1 (CPT codes) and Level 2 (Healthcare Common Procedure Coding System) codes. Health care providers must submit medical bills in accordance with the Labor Code and DWC rules, including any required DWC-specific modifiers.

13.   Pursuant to the American Medical Association's CPT Professional Edition code book, CPT codes 95831, 95832, 95834, and 97750 require one-on-one patient contact.

14.   Respondent violated TEX. LAB. CODE § 415.003(1), (5), and (6) each time he billed for medical services he did not perform or supervise.

Order

It is ordered that William R. Francis Jr, M.D., must:

1.   Pay an administrative penalty of $12,000 within 60 days from the date of this order. William R. Francis Jr, M.D., 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.

2.   Attend and complete an Ethics and Boundaries Assessment Services, L.L.C. course within 180 days from the date of this order. William R. Francis Jr, M.D., must provide to DWC confirmation that he attended and completed the workshop within 14 days of completion. Mail confirmation to the Texas Department of Insurance, Attn: Neal Bertling, DWC Enforcement Section, 7551 Metro Center Drive, Suite 100, MS-11, Austin, Texas 78744.

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

Approved Form and Content:

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

Unsworn Declaration

STATE OF _Texas_   §

                               §

COUNTY OF _Montgomery_   §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is _William R Francis Jr M.D_ I hold the position of _self_ and am the authorized representative of William R. Francis Jr, M.D. My business address is:

9200 New Trails Drive Ste 100, The woodlands Montgomery TX 77381.

(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.

[signature]

Declarant

Executed on _May 12_ , 2022.