

No. 2023-8207

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

Date: 9/14/2023

Subject Considered:

Ray R. Trey Fulp III, D.O.
721 Linberg Avenue
McAllen, Texas 78501

Consent Order
DWC Enforcement File No. 29271

General remarks and official action taken:

This is a consent order with Ray R. Trey Fulp III, D.O. (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 was licensed as a physician by the Texas Medical Board under License No. J7963 on June 28, 1995.
2. Respondent is a treating doctor within the Texas Workers' Compensation System.
3. Respondent was not selected to be tiered in any year's Performance Based Oversight (PBO) assessments.

Medical Quality Review No. 20-13-HCP

4. DWC conducted a medical quality review (MQR No. 20-13-HCP) of the [REDACTED] surgery Respondent performed on an injured employee in order to determine whether Respondent's care, treatment, and documentation was medically necessary and appropriate, and in accordance with the division's treatment guidelines.
5. In [REDACTED] another physician received prior approval to perform a [REDACTED] [REDACTED] a foraminotomy, and discectomy. However, on [REDACTED] the physician actually performed the procedure at [REDACTED]
6. On [REDACTED] Magnetic Resonance Imaging (MRI) showed that the injured employee experienced a [REDACTED] at [REDACTED] which affected multiple [REDACTED] in the injured [REDACTED]
7. On [REDACTED] a lumbar computed tomography scan (CT) demonstrated diffuse mild disc loss, [REDACTED]
8. DWC finds that despite a lack of radiological evidence for multi-level [REDACTED] on [REDACTED] Respondent documented that the injured employee had multilevel [REDACTED] He recommended a [REDACTED]
9. On [REDACTED] Respondent performed a [REDACTED] on the injured employee. [REDACTED]
10. After the surgery, Respondent diagnosed the injured employee as having a [REDACTED]
11. DWC finds that Respondent failed to adequately review all available and pertinent imaging studies before proposing and performing unnecessary procedures at [REDACTED]

12. Further, DWC finds that Respondent failed to follow the ODG, which does not recommend surgery unless the injured employee has completed conservative therapy options and there are objective findings confirming the presence of [REDACTED] between the radiological radicular findings and the physical examination.
 - a. DWC finds that Respondent failed to confirm that the injured employee completed conservative therapy, such as activity modification, drug therapy, or a referral to physical therapy prior to ordering surgery; and
 - b. DWC finds that Respondent failed to document confirmed objective findings of [REDACTED] prior to performing the [REDACTED]
13. Finally, DWC finds that Respondent failed to document his medical rationale for deviating from the ODG pursuant to appendix D of the treatment guidelines.
14. DWC finds that Respondent failed to practice in a reasonable and prudent manner in performing [REDACTED] that was not appropriate or medically necessary for an injured employee in the Texas Workers' Compensation system.

Assessment Of Sanction

1. Approving, ordering, or performing medically unnecessary procedures 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; the history and extent of previous administrative violations; the penalty necessary to deter future violations; and to the extent reasonable, the economic benefit resulting from the prohibited act.
4. DWC found the following mitigating factors pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e): Respondent demonstrated good faith in his cooperation with this medical quality review and his diligent consideration of the facts above. Respondent has served as a health care provider in the workers compensation system for many years.
5. Respondent acknowledges communicating with DWC about the relevant statute and rule violations alleged; that the findings of fact constitute administrative violation(s); 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 §§ 401.021; 402.001, 402.00114, 402.00116, 402.00128, 408.0041 (DD exam), 408.0231, 408.1225 (DD), 413.002, 413.044 (DD), 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; 415.034, 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 §§ 408.0231 and 415.0215; and 28 Tex. Admin. Code § 180.26, the commissioner may impose sanctions against a doctor who commits an administrative violation, including:
 - (1) reduction of allowable reimbursement;
 - (2) mandatory preauthorization of all or certain health care services;
 - (3) required peer review monitoring, reporting, and audit;
 - (4) deletion or suspension from the designated doctor list;
 - (5) restrictions on appointment under this Chapter 408 of the Texas Labor Code;
 - (6) conditions or restrictions on an insurance carrier regarding actions by insurance carriers under this subtitle in accordance with the memorandum of understanding adopted under Subsection (e); and
 - (7) mandatory participation in training classes or other courses as established or certified by the division.
6. Pursuant to Tex. Lab. Code § 408.0231(c)(5), health care providers must practice medicine and provide health care in an acceptable manner consistent with the public health, safety, and welfare.
7. Pursuant to Tex. Lab. Code § 415.003(2), a health care provider commits an administrative violation by administering improper, unreasonable, or medically unnecessary treatment or services; making an unnecessary referral; violating a commissioner rule; or, failing to comply with a provision of the Texas Labor Code.
8. Pursuant to Tex. Lab. Code § 415.003(5), a health care provider commits an administrative violation by violating a commissioner rule.


9. Pursuant to Tex. Lab. Code § 415.003(6), a health care provider commits an administrative violation by failing to comply with a provision of the Texas Workers' Compensation Act.
10. 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).
11. Pursuant to 28 Tex. Admin. Code § 180.22(a), health care providers shall provide all health care reasonably required by the nature of the injury as and when needed to: (1) cure or relieve the effects naturally resulting from the compensable injury; (2) promote recovery; or (3) enhance the ability of the injured employee to return to or retain employment.
12. Pursuant to 28 Tex. Admin. Code § 180.22(c)(2), the treating doctor is responsible for the efficient utilization and management of health care.
13. Respondent violated Tex. Lab. Code §§ 408.0231(c)(5); 415.003(2), (5), and (6); and 28 Tex. Admin. Code § 137.100 and 180.22(a) and (c) by performing improper, unreasonable, or medically unnecessary spinal surgery.

Order

It is ordered that Ray R. Trey Fulp III, D.O. must:


1. Pay an administrative penalty of **\$10,000** within 30 days from the date of this order. Ray R. Trey Fulp III, D.O. 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, P.O. Box 12030, Austin, Texas 78711-2030;
2. Within **180 days** from the date of the entry of this order, attend and complete at least **six hours of Continuing Medical Education (CME), in the topic of spine diagnosis or treatment** approved for Category I credits by the American Medical Association or the American Osteopathic Association and submit documentation of the completion to the DWC Enforcement Section; and
3. Within **30 days** from the date of the entry of a final order, Respondent shall contact the Center for Personalized Education for Professionals (CPEP) to register for the following courses:
 1. **Medical Record Keeping Seminar**; and
 2. **PROBE Ethics & Boundary Program**.

Upon registry, Respondent shall execute a written request and authorization to CPEP representatives as needed to provide a complete copy of the results of the Medical Record Keeping Seminar and PROBE Ethics & Boundaries Program to the Enforcement Section within 15 days of submission of the authorization to CPEP. Within **180 days** of the entry of the final order, Respondent shall attend and successfully complete the Medical Record Keeping Seminar and PROBE Ethics & Boundaries Program and submit documentation of the completion to the DWC Enforcement Section.



Jeff Nelson
Commissioner
TDI, Division of Workers' Compensation

Approved Form and Content:



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

