

No. 2023-8317

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

**Date:** 11/1/2023

**Subject Considered:**

Michael Martin Leonard, M.D.  
404 Lindberg Avenue  
McAllen, Texas 78501

Consent Order  
after SOAH Case #454-23-24982.CI  
DWC Enforcement File Nos. 27941, 27942, 30861, 31358, and 31508.

**General remarks and official action taken:**

This is a consent order with Michael Martin Leonard, 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 applicable procedural rights in consideration of the entry of this consent order.

**Findings of Fact**

1. Respondent is a health care provider in the Texas workers' compensation system.
2. On Aug. 23, 1981, Respondent was licensed as a physician by the Texas Medical Board under License No. F9728. He is board-certified in physical medicine and rehabilitation and has a secondary specialty in family medicine.
3. Respondent is a designated doctor (DD) in the Texas workers' compensation system. Respondent has been a DD for 30 years, having passed DD examinations for DD exams since 1999. Respondent's certification as a DD will expire on Oct. 27, 2023.
4. Respondent's certification to rate maximum medical improvement (MMI) and to assign IRs (IR) will expire on Oct. 27, 2023.

5. Respondent was classified as "poor" tier in the 2017\_69 and 2021\_69 Performance Based Oversight (PBO) assessments. Respondent was not selected to be classified in the 2017\_73\_M2, 2019, or 2021\_73 PBO assessments.

*File No. 27941*

6. On [REDACTED] injured employee 1 (IE1) sustained an injury while at work.
7. On [REDACTED] DWC ordered a DD exam to assess whether Maximum Medical Improvement (MMI) had been reached and if so, to determine the appropriate Impairment Rating (IR).
8. On [REDACTED] at 10:12 a.m., IE1 appeared for the scheduled DD appointment.
9. Although IE1 arrived at the examination site well before the examination, Respondent did not review IE1's medical records before the exam.
10. Respondent was mistaken about some of IE1's medical history and then told IE1 that he was referring IE1 to another provider so she could "get an A on it this time." In doing so, Respondent failed to treat IE1 in a professional manner when performing his duties as a DD.

*File No. 27942*

11. On [REDACTED] injured employee 2 (IE2) sustained a [REDACTED] strain while at work.
12. On or around [REDACTED] an Administrative Law Judge issued a Presiding Officer's Directive (POD) ordering a DD re-examination to be performed by Respondent on [REDACTED] to determine MMI and IR. The POD specifically instructed Respondent to only consider and rate IE2 for the compensable injury sustained on [REDACTED] that resulted in a [REDACTED] strain.
13. On [REDACTED] the Commissioner ordered a DD exam on IE2 to assess MMI and IR, to be performed on [REDACTED]
14. Respondent conducted the DD exam on IE2 on [REDACTED] Respondent referred IE2 for a "Neuropsychological Evaluation" which was completed on [REDACTED] Additional testing was not requested or authorized in the POD.

15. Respondent failed to document the need for the [REDACTED] in the DD report and in IE2's medical records in contravention of the Official Disability Guidelines (ODG).
16. Respondent states he ordered the [REDACTED] because IE2 had a prior [REDACTED] injury, but did not realize his error in ordering the test before the test was completed.
17. Respondent ordered a medically unnecessary [REDACTED] for IE2 and made an unnecessary referral.
21. Respondent was required to submit a Form DWC-68, *Designated Doctor Examination Data Report* (DWC-68), a Form DWC-69, a Narrative Report (DWC-69 or DD report), and a Form DWC-73, *Work Status Report* (DWC-73), to the injured employee, DWC, the treating physician, and the insurance carrier within seven working days of the DD exam, or by [REDACTED]
18. On [REDACTED] 45 days after the DD exam and almost one month after the [REDACTED] was performed on [REDACTED] Respondent submitted a request for an extension of time to review the [REDACTED] results and to complete the final DD report.
19. On [REDACTED] DWC granted the extension of time until 15 days after receipt of the results of the additional testing.
20. Respondent failed to submit the DD report to DWC until [REDACTED] In the DD report, Respondent acknowledged that a [REDACTED] strain was the only compensable injury. Respondent did not refer to the [REDACTED] in his DD report; nor did he note that the evaluation had been ordered or explain the reason for the referral.

*File No. 30861*

19. On [REDACTED] injured employee 3 (IE3) sustained injuries while at work.
20. On [REDACTED] DWC issued a Commissioner Order requiring Respondent to conduct a DD exam of IE3 on [REDACTED] at 10:00 a.m., to assess MMI, to make an IR determination, to evaluate the extent of the injury, and to assess whether the injured employee could return to work.



22. On [REDACTED] Respondent's agent sent a notice to IE3 requesting to reschedule the DD examination.
23. IE3's response stated that the proposed date conflicted with IE3's schedule, that IE3 was calling to try and reschedule, and ended with "Please advise."
24. Respondent provided no evidence that anyone contacted IE3 to work within IE3's schedule to reschedule the examination after that.
25. Since no other mutually agreed upon exam date was reached, IE3 attended the appointment on [REDACTED] Respondent did not attend the appointment; nor did he perform the scheduled DD exam.

*File No. 31358*

26. On [REDACTED] injured employee 4 (IE4) sustained an injury while at work.
27. On [REDACTED] DWC issued a Commissioner's Order requiring Respondent to conduct a DD examination of IE4 to determine MMI, IR, and to assess whether the injured employee could return to work.
28. On [REDACTED] Respondent completed the DD exam.
29. Respondent was required to submit a DWC-68, a DWC-69, and a DWC-73 to the injured employee, DWC, the treating physician, and the insurance carrier within seven working days of the DD exam, or by [REDACTED]
30. Although Respondent faxed the DWC-68, DWC-69, and DWC-73 forms to DWC on [REDACTED] Respondent did not send the required DWC forms to IE4 until 5:24 p.m. on [REDACTED] which was 12 days late.

*File No. 31508*

31. On [REDACTED] injured employee 5 (IE5) sustained an injury at work.
32. On [REDACTED] DWC issued a Commissioner's Order requiring Respondent to conduct a DD examination of IE5 to determine MMI, the IR, and to assess whether IE5 could return to work.
33. On [REDACTED] Respondent completed a DD exam of IE5.

34. Respondent was required to submit a DWC-68, a DWC-69, and a DWC-73 to the injured employee, DWC, the treating physician, and the insurance carrier within seven working days of the DD exam, or by [REDACTED]
35. Instead, on [REDACTED] Respondent filed a request with DWC for additional time in which to complete the final DD report to allow for [REDACTED] and [REDACTED] on IE5. On [REDACTED] DWC approved an extension that required Respondent to submit these reports within 15 days of receipt of the testing results.
36. The [REDACTED] was conducted on [REDACTED] and the results were received by Respondent on [REDACTED] Respondent's DD Report for IE5 was due 15 days from receipt of the additional testing, or by [REDACTED]
37. Although Respondent attempted to obtain the [REDACTED] results for IE5 from the provider before finalizing the DD report, his attempts to contact the provider were unsuccessful and he submitted the DD report without addressing the imaging results. Further, Respondent's DWC-69 was not received by the insurance carrier until after 5 p.m. on [REDACTED] which was 14 days late. Respondent failed to report the reason for the delay.
38. Respondent neither admits nor denies the allegations set forth in this Consent Order but does not contest the entry of this order in the interest of compromise and as a settlement agreement.

### **Assessment of Sanction**

1. Approving, ordering, or performing medically unnecessary procedures that are not supported by evidence-based medicine is costly and may present a risk of harm to system participants. This conduct places an emotional, physical, and financial burden on injured employees and may affect an injured employee's ability to return to work.
2. Failure to attend a DD examination without an injured employee's cooperation and agreement unnecessarily delays the resolution of medical disputes and affects the injured employee's ability to obtain necessary medical treatment in a timely manner. It also unnecessarily prevents an injured employee's ability to receive income benefits in a timely and cost-effective manner, which is harmful to injured employees and the Texas workers' compensation system.

3. The examinations and reports from a DD have significant consequences on workers' compensation claims, the benefits of injured employees, and the Texas workers' compensation system. DWC relies on DDs to comply with the rules and treatment guidelines to provide a fair and accessible dispute resolution process.
4. Failure to provide assessments and reports consistent with the division's reporting and treatment guidelines hinders injured employees' access to high-quality medical care and the employee's ability to return to work as soon as it is considered safe and appropriate.
6. Pursuant to Tex. Lab. Code §§ 408.0231(c)(1) and (3), the commissioner may impose 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.
7. Pursuant to Tex. Lab. Code § 408.0231(f)(7), the commissioner may also impose sanctions that include the reduction of allowable reimbursement, mandatory preauthorization of certain health care services, required peer review monitoring, reporting, and audit requirements, deletion of suspension from the approved doctor list, and restrictions on appointments.
8. Pursuant to 28 Tex. Admin. Code § 127.210(a)(15), the commissioner may sanction a DD for violating the Act or DWC rules while serving as a DD.
9. 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 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.
10. 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 penalty necessary to deter future violations; whether the administrative violation had a negative impact on the delivery of benefits to an injured employee; and the history of compliance with EDI requirements.
11. DWC considered mitigating factors in determining the proposed sanction in this case including actions taken to prevent future violations. Documentation shows that Covid-19 protocols and procedures were implemented in Respondent's workplace in [REDACTED] that included screening patients when confirming appointments, requiring doctors and employees to use gloves and hand sanitizer, and masking. These procedures and protocols were implemented on or around [REDACTED] and continued through [REDACTED] when Governor Abbott lifted the mask mandate. Because these protocols and procedures are no longer required, there is little, if any, risk of future violations.
12. Respondent acknowledges communicating with DWC about the relevant statute and rule violations alleged; that the stated 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 §§ 401.021; 402.001, 402.00114, 402.00116, 402.00128, 408.0041, 408.0231, 408.1225, 413.002, 413.044, 413.0511, 413.0512, 414.002, 414.003, 415.021, and 415.0215; 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, 402.00128(b)(6)-(7), and 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 § 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.
5. Pursuant to Tex. Lab. Code § 415.003, 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.
6. Pursuant to Tex. Lab. Code § 415.003(5) and (6), a health care provider commits an administrative violation if the person violates a DWC rule or a provision of the Texas Workers' Compensation Act.
7. Pursuant to Tex. Lab. Code § 415.021, the commissioner may assess an administrative penalty against a person who commits an administrative violation.

#### Unnecessary Referral

5. Pursuant to Tex. Lab. Code § 415.003(2), a health care provider commits an administrative violation if the person administers improper, unreasonable, or medically unnecessary services.
6. Pursuant to Tex. Lab. Code § 415.003(3), a health care provider commits an administrative violation if the person makes an unnecessary referral.
7. Pursuant to Tex. Lab. Code § 415.003(4) and 28 Tex. Admin. Code § 137.100, a health care provider commits an administrative violation by violating the division's fee and treatment guidelines, including the applicable 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).
8. Respondent violated Tex. Lab. Code § 415.003(2), (3), (4), and (5)) and 28 Tex. Admin. Code §§ 127.220(a)(2)-(7) and 137.100 by making an unnecessary



neuropsychological evaluation referral for IE2 without justifying the referral or the deviation from the ODG in the DD report.

Failure to Attend or Properly Reschedule a DD Examination

9. Pursuant to 28 Tex. Admin. Code § 127.5(h), the DD's office and the injured employee must contact each other if a scheduling conflict exists for the DD appointment and must mutually agree to reschedule within one working day before the appointment. An examination cannot be rescheduled without the mutual agreement of the DD and the injured employee.
10. Pursuant to 28 Tex. Admin. Code § 127.10(c), if a DD must perform additional testing to resolve an issue, the DD report must be completed within 15 working days of the DD examination unless the DD receives DWC approval for additional time before the 15 days expire.
11. Pursuant to 28 Tex. Admin. Code § 127.220(a), a DD report must be filed using the applicable DWC forms and, at a minimum, the report should explain how the DD determined the answer to each question within a reasonable degree of medical probability, demonstrate how the American Medical Association's guides to the evaluation of permanent impairment, DWC's treatment and return to work guidelines, and other evidence-based medicine, if available. In addition, if additional testing is recommended or referrals made as part of the evaluation, the DD must identify the types of testing or referral examinations and explain why this additional testing is necessary to resolve a question at issue in the examination.
12. Respondent violated 28 Tex. Admin. Code §§ 127.5(h) by failing to enter into an agreement with IE3 to reschedule the May 18, 2022, DD exam.
13. Respondent violated Tex. Lab. Code § 415.003(5) and 28 Tex. Admin. Code § 127.200(a)(6) by failing to attend the DD exam and to perform the scheduled examination on IE3.

Failure to Review Medical Records Before DD Exam

14. Pursuant to 28 Tex. Admin. Code § 127.10(b), a DD must review the injured employee's medical records, including any analysis the injured employee's medical condition, functional abilities, and return to work opportunities before examining the employee.

15. Respondent violated Tex. Lab. Code §§ 415.003(5) and 28 Tex. Admin. Code § 127.10(b) when he failed to fully review IE1's medical records prior to the examination.

Failure to Conduct a DD Examination in a Professional and Courteous Manner

16. Pursuant to 28 Tex. Admin. Code §§ 127.200(a)(1) and (9), a DD must maintain a professional and courteous demeanor when performing his duties as a DD.
17. Respondent violated Tex. Lab. Code §§ 415.003(5) and 28 Tex. Admin. Code § 127.200(a)(9) by failing to maintain a professional and courteous demeanor with IE1 when performing his duties as a DD.

Failure to Timely Submit DD and Work Status Reports

18. Pursuant to 28 Tex. Admin. Code § 127.10(d) and (e), a DD who determines MMI or assigns an IR to an injured employee must complete and file a DD report, as required by 28 Tex. Admin. Code §§130.1 and 130.3.
19. Pursuant to 28 Tex. Admin. Code § 127.10(f), a DD who examines an injured employee for any question related to return to work must complete a Work Status Report within seven working days of the date of the DD examination and must file the reports with the injured employee, the treating physician, DWC, and the insurance carrier.
21. Respondent violated Tex. Lab. Code § 415.003(5) and 28 Tex. Admin. Code §§ 127.10(d), (e) and (f) by failing to timely file DWC DD and Work Status reports for IE2, IE4, and IE5.

**ORDER**

It is ordered that Michael Martin Leonard, M.D., must:

1. It is ordered that Michael Martin Leonard, M.D., must pay an administrative penalty of \$5,000 within 30 days from the date the Commissioner signs the order.

After receiving an invoice, Michael Martin Leonard, M.D., 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; and

2. Enroll and complete the Professional Standards essay offered by Ethics and Boundaries Assessment Services, LLC (EBAS) within 180 days from the date of this Order. Confirmation of the attendance and completion of the essay must be provided to DWC within 14 days of completion.



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Jeff Nelson  
Commissioner  
TDI, Division of Workers' Compensation

Approved Form and Content:



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Michelle A. McFaddin  
Lead Attorney, Enforcement  
Compliance and Investigations  
TDI, Division of Workers' Compensation

