

No. **3971**

OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF WORKERS' COMPENSATION

Date: **MAY 19 2015**

Subject Considered:

JAMES DAVID KEY, SR., M.D.
302 Kings Highway, Suite 106
Brownsville, TX 78521-4224

CONSENT ORDER
TDI ENFORCEMENT FILE NO. 6570

General remarks and official action taken:

The commissioner of workers' compensation considers whether disciplinary action should be taken against James David Key, M.D. (Dr. Key).

WAIVER

Dr. Key acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Dr. Key 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 of workers' compensation makes the following findings of fact:

1. Dr. Key is a health care provider who provides medical treatment and care to injured employees in the Texas workers' compensation system. Dr. Key is an orthopedic surgeon licensed by the State of Texas Medical Board on December 4, 1974. He holds Texas license number E3339.
2. Dr. Key was not selected to be tiered in the 2007, 2009, 2011, or 2013 Performance Based Oversight assessments.
3. The Texas Department of Insurance, Division of Workers' Compensation conducted a review of medical bills submitted under Dr. Key's name. The division randomly selected 100 medical bills for review from a sample of 798 medical bills with dates of service ranging from March 1, 2014 to June 30, 2014.

The sample was extracted from Medical State Reporting data collected from workers' compensation insurance carriers and maintained by the division.

4. The bills filed under Dr. Key's name were not appropriate medical bills for American Medical Association (AMA) Current Procedural Terminology (CPT) manual muscle test codes 95831 (hand muscle testing), and 95832 (limb muscle testing).
5. CPT code 95831 and CPT code 95832, are physician services as defined by the 2014 Medicare Physician Fee Schedule. These services cannot be split into a technical and professional component.
6. In all 100 bills reviewed, the bills submitted under Dr. Key's name were for muscle test codes CPT code 95831, and CPT code 95832 as the rendering provider, however the medical records included with the medical bills do not support that Dr. Key performed the services.
7. Dr. Key maintains that he was contracted by the provider only as the Medical Director and for the only purpose to review diagnostic testing to verify quality control and, further, that he was not the treating physician for any of the patients for whom the bills were submitted.
8. Dr. Key maintains that he was unaware of the use of his name in presenting the bills and receiving payments, nor did he receive any proceeds of the payments.
9. Dr. Key maintains that he was not aware of the billings in his name to the Division of Workers Compensation until March 2015, when he was informed by letter of the results of the audit.
10. Dr. Key failed to exercise adequate surveillance over the administrative actions of the provider company which was using his name improperly.
11. This consent order, and the actions required hereby, is entered into in the nature of compromise and settlement and in order to avoid the time, trouble, and expense of resolving this dispute through administrative or judicial proceedings. James David Key, Sr. M.D. neither admits nor denies the allegations contained herein.
12. By cooperating fully with the Division in the investigation and resolution of this matter, James David Key saves the State of Texas the cost and expense of further proceedings.
13. This Agreed Consent Order resolves all matters in TDI Enforcement File No. 6570.

CONCLUSIONS OF LAW

The commissioner of workers' compensation makes the following conclusions of law:

1. The commissioner of workers' compensation has jurisdiction over this matter pursuant to TEX. LAB. CODE ANN. §§ 402.001, 402.00111, 402.00114, 402.00116, 402.00128, 413.011, 415.003, 415.021, 415.0215, and 415.023; 28 TEX. ADMIN. CODE §§ 133.10, 133.20, 134.203, 180.1 and 180.26; and TEX. GOV'T CODE ANN. §§ 2001.051-2001.178.
2. The commissioner of workers' compensation has authority to informally dispose of this matter as set forth herein under TEX. GOV'T CODE ANN. § 2001.056, TEX. LAB. CODE ANN. §§ 401.021 and 402.00128(b)(7), and 28 TEX. ADMIN. CODE § 180.26(h).
3. Pursuant to TEX. LAB. CODE ANN. § 415.021, in addition to any sanction, administrative penalty, or other remedy authorized by this subtitle, the commissioner of workers' compensation may assess an administrative penalty against a person who commits an administrative violation.
4. Pursuant to 28 TEX. ADMIN. CODE § 180.26(c)(3), in addition to a penalty or the other sanctions that may be imposed in accordance with other provisions of the Act, the division may also impose sanctions pursuant to TEX. LAB. CODE ANN. § 415.023(b) against a health care provider if they commit an administrative violation as a matter of practice, meaning a repeated violation of the Act or a rule, specifically suspension from practice before the division.
5. 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 shall apply Medicare payment policies, including its coding; billing; correct coding initiatives edits; modifiers...and other payment policies in effect on the date a service is provided with any additions or exceptions in the rules.
6. Pursuant to 28 TEX. ADMIN. CODE § 134.203(b)(1), Dr. Key committed an administrative violation each time there was a bill submitted in his name for hand or limb muscle testing he did not perform, and which was not in accordance with the applicable Medicare billing policies, as implemented by the Division.
7. Pursuant to TEX. LAB. CODE ANN. § 415.003(1), a health care provider commits an administrative violation if the person submits a charge for health care that was not furnished.


8. Pursuant to 28 TEX. ADMIN. CODE § 415.003(1), Dr. Key committed an administrative violation each time there was a bill submitted in his name for a service that he did not perform.

ORDER

James David Key, Sr. M.D. is ORDERED to pay an administrative penalty of \$75,000. James David Key, Sr. M.D must pay \$60,000 within 30 days from the date of this order, and an additional \$15,000 within 90 days of the date of this order.

Payment must be paid by company check, cashier's check, or money order made payable to the "State of Texas," and mailed to the Texas Department of Insurance, Compliance Division-DWC, MC-9999, P.O. Box 149104, Austin, Texas 78714-9104.

It is further ORDERED that James David Key, Sr. M.D, will not participate in treating, examining, and/or consulting with other physicians regarding injured employees who are covered under the Texas workers' compensation system, and will not receive direct or indirect remuneration from the Texas workers' compensation system. Should James David Key, Sr. M.D. petition the Division to be allowed to participate in the workers' compensation system, the Division will deny the petition and the petition will be a violation of this order.



W. Ryan Brannan
Commissioner of Workers' Compensation

Approved as to Form and Content:



Toya Lutz
Staff Attorney, Compliance Division
Texas Department of Insurance

COMMISSIONER'S ORDER
James David Key, Sr., M.D.
TDI Enforcement File No. 6570
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AFFIDAVIT

STATE OF TEXAS

COUNTY OF Harris

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Before me, the undersigned authority, personally appeared the affiant, James David Key, Sr. M.D., who being by me duly sworn, deposed as follows:

"My name is James David Key, Sr. M.D., I am of sound mind, capable of making this statement, and have personal knowledge of these facts, which are true and correct.

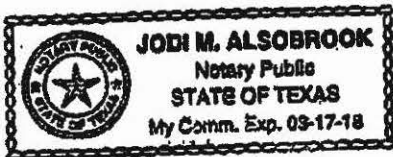
I have knowingly and voluntarily entered into the foregoing consent order and agree with and consent to the issuance and service of the same by the commissioner of workers' compensation of the State of Texas."

Affiant

James D Key

SWORN TO AND SUBSCRIBED before me on May 15th, 2015.

(NOTARY SEAL)



Jodi Alsobrook
Signature of Notary Public

Jodi Alsobrook
Printed Name of Notary Public