

No. **2022-7468**

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

Date: 8/30/2022

Subject Considered:

Lincare, Inc.
P.O. BOX 105760
Atlanta, Georgia 30348-5760

Consent Order
DWC Enforcement File No. 29267

General remarks and official action taken:

This is a consent order with Lincare, Inc. (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 is a health care provider operating in the Texas workers' compensation system.
2. Respondent was not selected to be tiered in the 2007, 2009, 2010, 2012, 2014, 2016, 2018, or 2020 Performance Based Oversight (PBO) assessments.

Improperly Pursuing a Private Claim Against an Injured Employee

3. On [REDACTED] Respondent provided medical services to an injured employee in the Texas workers' compensation system.
4. On [REDACTED] the workers' compensation insurance carrier for the injured employee sent a letter to Respondent reporting the injured employee's status as a workers' compensation claimant and to asking Respondent to cease billing the injured employee directly.
5. On [REDACTED] and [REDACTED] Respondent sent requests for payment directly to the injured employee that stated non-payment would result in the balance being sent to a collection agency.
6. On [REDACTED] Respondent sent a bill to the injured employee for the health care services it provided on [REDACTED]
7. On [REDACTED] DWC sent a letter to Respondent to inform it of the injured employee's status as a workers' compensation claimant and direct it to cease billing the injured employee.
8. There is no finding determining that the injured employee violated Tex. Lab. Code § 408.022 in selecting a treating doctor and no final adjudication that the claim was not compensable.

Assessment of Sanction

1. 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.
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:
 - PBO assessments;
 - prompt and earnest 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.
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; the history and extent of previous administrative violations; the penalty necessary to deter future violations; and other matters that justice may require, including evidence of a heightened awareness of the legal duty to comply with the Texas Workers' Compensation Act and DWC rules.
4. 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: the demonstrated good faith of the violator, including actions taken to rectify the consequences of the prohibited act. Further, Respondent voluntarily proposed a systemic training program to be implemented within 90 days of this Order.
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 agrees with the proposed sanction, 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 §§ 402.001, 402.00114, 402.00116, 402.00128, 414.002, and 414.003.
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 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 § 413.042, a health care provider commits an administrative violation by pursuing a private claim against a workers' compensation claimant for all or part of the cost of a health care service unless the injury is finally adjudicated as not compensable, or the injured employee violates Tex. Lab. Code § 408.022 relating to the selection of a doctor.
5. 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.
6. Respondent violated Tex. Lab. Code §§ 413.042 and 415.003(6) by directly billing an injured employee for workers' compensation health care services.
7. Pursuant to Tex. Lab. Code § 415.021, the commissioner may assess an administrative penalty against an entity that commits an administrative violation.

Order

It is ordered that Lincare, Inc. must pay an administrative penalty of \$2,500 within 30 days from the date of this order. Lincare, Inc. 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.



Jeff Nelson
Commissioner
TDI, Division of Workers' Compensation

Approved Form and Content:



Daniel Garcia
Staff Attorney, Enforcement
Compliance and Investigations
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