

No. 2023-8187

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

Date: 9/6/2023

Subject Considered:

Dan Mai Ung, D.C.
8015 Gulf Freeway, Suite A
Houston, Texas 77017-3621

Consent Order
after SOAH Case 454-23-21635
DWC Enforcement File No. 24397

General remarks and official action taken:

This is a consent order with Dan Mai Ung, D.C. (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. On February 4, 1999, Respondent was licensed as a chiropractor by the Texas Board of Chiropractic Examiners under License No. 8188.

3. Respondent was not selected to be tiered in any year of the Performance Based Oversight (PBO) assessment.

Medical Quality Review (MQR) No. 19-653 HCP

4. On June 18, 2019, DWC initiated MQR No. 19-653 HCP to determine whether Respondent complied with the Texas Labor Code and DWC rules regarding the proper care, treatment, and documentation as a treating doctor.

Ordering Unnecessary Magnetic Resonance Imaging (MRI) and Failure to Apply DWC Treatment Guidelines

5. Beginning [REDACTED] Respondent treated an injured employee for cervical and lumbar spine strain and right knee pain after a work-related motor vehicle accident.
6. At the initial visit on [REDACTED] Respondent examined the patient and documented that the patient had no musculoskeletal joint pain or swelling but did show limited range of motion in the [REDACTED] and [REDACTED] and [REDACTED]. Respondent documented loss of strength to the injured employee's [REDACTED] and [REDACTED]. Respondent failed to sufficiently document his analysis of the data collected during the examination and how the data supports a finding of [REDACTED].
7. At the conclusion of the first visit, Respondent recommended six weeks of physical therapy and an MRI. Respondent failed to document an adequate rationale for the MRI recommendation pursuant to the Official Disability Guidelines—Treatment in Workers' Comp (ODG).
8. On [REDACTED] Respondent completed a Work Status Report using DWC Form 073 (DWC-73) recommending that the injured employee not return to work between [REDACTED] and [REDACTED]. However, Respondent failed to document any rationale justifying this recommendation.
9. On [REDACTED] Respondent ordered an MRI of the [REDACTED] and suggested a [REDACTED] MRI on [REDACTED]. A [REDACTED] MRI was performed by a different care provider in [REDACTED].
10. Between [REDACTED] and [REDACTED] Respondent provided 22 physical therapy treatments, which included passive and active range of motion exercises

- on various mechanical exercise machines, electrical stimulation, and traction. Respondent failed to adequately document the treatments, any existing functional improvement or results, or any rationale to justify keeping the injured employee off work for a month.
11. Respondent treated the injured employee on the day following the injury. The injured employee was seen by a different provider on the day of the accident and Respondent did not document a request or review any prior treatments recommended by that provider.
 12. Respondent failed to provide an adequate rationale or document findings supporting the MRI or treatment according to the ODG, which requires documented evidence that the injured employee received at least one month of conservative therapy prior to Respondent's referral for an MRI, or, in the alternative, adequate documentation justifying the deviation from the ODG.
 13. Respondent failed to provide adequate documentation of clinical findings or rationale to support his treatments or diagnoses; nor did he provide evidence of a causation analysis of how the injured worker sustained a work-related [REDACTED] while sitting restrained in a motor vehicle with no signs of direct trauma.
 14. Respondent failed to disclose to DWC that he is the owner of Americana Injury Clinic, Inc., a for-profit clinic that performed two MRIs on the injured employee. Therefore, Respondent failed to disclose that he had a financial interest in the health care provider that performed the MRIs.
 15. On [REDACTED] after notice of these allegations, Respondent provided the required financial disclosure for Americana Injury Clinic, Inc. In his response to the notice of violations, Respondent provided a statement that he is no longer making MRI referrals to Americana Injury Clinic.

Assessment Of Sanction

1. Ordering or performing medically unnecessary tests places an emotional, physical, and financial burden on injured employees and imposes significant additional costs on the Texas workers' compensation system.

2. Failure to provide care consistent with the division's 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.
3. Examinations and reports from treating doctors have significant consequences in workers' compensation claims, the benefits of injured employees, and the Texas workers' compensation system. DWC relies on doctors to comply with the rules and treatment guidelines to provide a fair and accessible dispute resolution process.
4. In assessing the sanctions 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.
5. 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 penalty necessary to deter future violations, and the economic benefit resulting from the prohibited act.

6. DWC is aware of the following mitigating factors pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e): Respondent has had no prior disciplinary history. Respondent demonstrated diligence and good faith in responding to DWC. There is no evidence of patient harm, and the injured employee showed some improvement in overall functionality. Respondent's participation in this review and investigation process has provided him with a heightened awareness of the legal duty to comply with the Texas Workers' Compensation Act and DWC rules.
7. 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).

Conclusions of Law

1. The commissioner has jurisdiction over this matter pursuant to Tex. Lab. Code §§ 402.001, 402.00114, 402.00116, 402.00128, 413.002, 413.041(a), 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, 402.001; 28 Tex. Admin. Code §§ 180.26 (h) and (i); and Tex. Gov't Code § 2001.056.
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(c)(3), the commissioner may impose additional sanctions against a health care provider who commits a violation of Chapters 413 or 415 of the Texas Labor Code. One of the criteria for imposing sanctions on a doctor may include evidence from the medical records that the

doctor's evaluations are substantially different from those the commissioner finds to be fair and reasonable.

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 § 408.0231(f)(7), the commissioner may impose sanctions against a doctor who commits an administrative violation, including mandatory participation in training classes.
8. Pursuant to Tex. Lab. Code § 413.041(a), each health care practitioner shall disclose to the division the identity of any health care provider in which the practitioner has a financial interest in the manner approved by the commissioner.
9. 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 treatment.
10. Pursuant to Tex. Lab. Code § 415.003(3), a health care provider commits an administrative violation if the person makes an unnecessary referral.
11. Pursuant to Tex. Lab. Code § 415.003(4) and 28 Tex. Admin. Code § 137.100, a health care provider shall provide treatment in accordance with 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).
12. 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.
13. Pursuant to 28 Tex. Admin. Code § 129.5, a doctor shall file a Work Status Report in the form and manner prescribed by the division. The Work Status Report shall provide an explanation of how the injured employee's compensable injury prevents the employee from returning to work.
14. Pursuant to 28 Tex. Admin. Code § 180.22(c)(2), the treating doctor is responsible for the efficient utilization and management of health care.

15. Pursuant to 28 Tex. Admin. Code § 180.24(b), a health care practitioner shall file a disclosure with the division that identifies the name, address, and other unique identifying information of any health provider in which the practitioner has a financial interest along with information relating to the nature of such financial interest.
16. Respondent violated Tex. Lab. Code § 415.003(2) by failing to provide an adequate rationale or to document the findings that supported the need for the MRIs in accordance with the ODG, which requires evidence that the injured employee has received at least one month of conservative therapy prior to the referrals for MRIs, or, in the alternative, adequate justification to deviate from the ODG.
17. Respondent violated Tex. Lab. Code § 415.003(2) and 28 Tex. Admin. Code § 180.22(c)(2) when he administered treatment or provided services to the injured employee that were improper, unreasonable, or medically unnecessary.
18. Respondent violated Tex. Lab. Code § 415.003(3) and 28 Tex. Admin. Code §§ 137.100 and 180.22(c)(2) when he committed an administrative violation by making unnecessary referrals for MRIs.
19. Respondent violated Tex. Lab. Code § 415.003(4) and 28 Tex. Admin. Code 137.100 when he committed an administrative violation by violating DWC's treatment guidelines or, in the alternative, failing to justify his deviance from the ODG.
20. Respondent violated Tex. Lab. Code § 415.003(5) and (6) and 28 Tex. Admin. Code § 129.5 when he committed an administrative violation by filing a Work Status Report that failed to explain the basis for his return-to-work determination.
21. Respondent violated Tex. Lab. Code § 413.041(a) and 28 Tex. Admin. Code § 180.24(b) when he committed an administrative violation by failing to disclose his financial interest in Americana Injury Clinic Inc., the health care provider that performed the MRIs ordered by Respondent.

Order

1. It is ORDERED that Dan Mai Ung, D.C., must pay an administrative penalty of \$7,000 within 30 days from the date the Commissioner signs the order.

After receiving an invoice, Dan Mai Ung, D.C., 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. It is further ORDERED that Dan Mai Ung, D.C., must attend and complete **six hours** of continuing education, within 180 days from the date of this Order, divided as follows:
 - a. at least **two hours** in evidence-based spinal evaluation, diagnostics and/or management of spinal conditions;
 - b. at least **two hours** in evidence-based evaluation, diagnostics and/or management of knee conditions; and
 - c. at least **two hours** in ethics.

Respondent must request approval for each course from DWC prior to enrollment. To obtain approval for a course, Respondent must submit in writing to Enforcement information on the course, including a reasonably detailed description of the course content, including the course location and dates of instruction. Confirmation of the attendance and completion of a continuing medical education course must be provided to DWC within 14 days of completion. Mail confirmation to the Texas Department of Insurance, Attn: DWC Enforcement Section, MC-CI, P.O. Box 12050, Austin, Texas 78711-2050.



Jeff Nelson
Commissioner
TDI, Division of Workers' Compensation

Approved Form and Content:



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

