

No. **2024-8484**

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

**Date: 1/24/2024**

**Subject Considered:**

Richard Simon Levy, M.D.  
6506 Brookshire Drive  
Dallas, Texas 75230-4104

Consent Order  
DWC Enforcement File No. 31293

**General remarks and official action taken:**

This is a consent order with Richard Simon Levy, 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 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 August 17, 1996, the Texas Medical Board issued Physician License No. K0891 to Respondent.
3. Respondent was not selected to be tiered in the 2019 or 2021 PBO assessments.

██████████ Plan Based Audit – Medical Quality Review No. 22-18 HCP

4. On ██████████, DWC initiated a medical quality review 22-18 HCP to evaluate the appropriateness and recordkeeping of Respondent's ██████████ or ██████████ ██████████ conducted with ██████████.
5. The audit identified five potential cases to review. Respondent failed to meet the division's treatment guidelines and documentation standards in three cases.
6. Pursuant to 28 Tex. Admin. Code §137.100, health care providers shall provide treatment in accordance with the Division's treatment guidelines, identified as the Official Disability Guidelines – Treatment in Workers' Comp (ODG).
7. In cases where a healthcare provider recommends medical care that falls outside the recommendations of the ODG, the health care provider must document the rationale for the exception to the ODG under Appendix D of the ODG.

*Injured Employee 1 (IE1)*

8. IE1 reported a right shoulder injury sustained on July 11, 2016.
9. On ██████████, Magnetic Resonance Imaging (MRI) of IE1's right ██████████ showed a ██████████ in the ██████████ and a ██████████. Further, the ██████████ of the ██████████ presented as a likely ██████████. The MRI report noted that IE1 underwent two previous ██████████ in ██████████ and ██████████.
10. On ██████████, Respondent reviewed X-rays of IE1's right ██████████ that showed ██████████ from the previous ██████████ and the foreshortening of a ██████████.
11. On ██████████, a second MRI of IE's right ██████████ confirmed the previous ██████████ and showed that IE1 was ██████████ with ██████████ of the ██████████.
12. On ██████████, Respondent performed a ██████████ on IE1, including ██████████ with ██████████ and ██████████. However, ██████████ and ██████████ had been

performed during previous [REDACTED] surgeries. Respondent failed to demonstrate or document an adequate medical rationale for the repeat [REDACTED] or the [REDACTED] using evidence-based medicine.

13. Respondent deviated from the ODG and failed to follow the division's treatment guidelines by performing a repeat [REDACTED] without demonstrating or documenting sufficient clinical or operative observations in the injured employee's medical records.
14. Respondent failed to provide an adequate explanation for deviating from the ODG in the care and treatment of IE1.
15. Respondent performed improper, unreasonable, or medically unnecessary [REDACTED] and acromioplasty procedures on IE1.

*Injured Employee 2 (IE2)*

16. IE2 reported a right shoulder injury sustained on [REDACTED].
17. On [REDACTED], an MRI showed IE2 had a supraspinatus [REDACTED] as well as a [REDACTED]. X-rays showed that IE2 had a [REDACTED].
18. On [REDACTED], Respondent performed a [REDACTED] including [REDACTED] with [REDACTED], and [REDACTED].
19. IE2 reported a left [REDACTED] injury sustained on [REDACTED].
20. On [REDACTED], an MRI of IE2's left shoulder showed that the [REDACTED] and [REDACTED] were torn. Further, IE2 demonstrated [REDACTED] and [REDACTED] in the [REDACTED] as well as [REDACTED] changes in the [REDACTED] with [REDACTED] of the [REDACTED].
21. On [REDACTED], Respondent performed a left [REDACTED] that included [REDACTED] and [REDACTED].

22. Respondent failed to demonstrate or document an adequate medical rationale for the [REDACTED] on [REDACTED], through sufficient clinical or operative criteria in the injured employee's medical records.
23. Based on IE2's claims of persistent weakness, Respondent ordered an MRI. On [REDACTED] the MRI of IE2's left [REDACTED] showed a [REDACTED].
24. On [REDACTED], Respondent performed revision surgery on IE2's left [REDACTED] to [REDACTED] the [REDACTED] including [REDACTED] with [REDACTED].
25. Respondent deviated from the ODG and failed to follow the division's treatment guidelines when Respondent performed subacromial decompression on IE2 on [REDACTED], without demonstrating or documenting clinical symptoms or surgical observations that would have otherwise warranted that surgical procedure.
26. Respondent failed to document an adequate explanation in the injured employee's medical records for deviating from the ODG in the care and treatment of IE2.

*Injured Employee 3 (IE3)*

27. IE3 reported a left [REDACTED] injury sustained on [REDACTED].
28. On [REDACTED], Respondent recommended surgery to repair IE3's left [REDACTED] to address a 50% [REDACTED].
29. On [REDACTED], Respondent performed [REDACTED] with [REDACTED], and [REDACTED] as part of the left [REDACTED]. However, Respondent failed to document his intent to perform a [REDACTED] and [REDACTED] in the injured employee's medical records, or in his explanation for the procedures.
30. Respondent failed to document an adequate explanation in the injured employee's medical records for deviating from the ODG in his care and treatment of IE3.

*Operative Report Documentation*

31. While Respondent included operative reports for the surgeries in each injured employee's medical records, Respondent's reports in all three cases were substantially similar to each other in format and content. Respondent failed to provide sufficient specific detail, or individual description of each [REDACTED] [REDACTED] or [REDACTED], to provide medical rationale for the procedures.
32. Respondent admitted that he uses a template for his operative reports.

**Assessment Of Sanction**

1. Approving, ordering, or performing medically unnecessary procedures with poor projected outcomes that are not supported by evidence-based medicine presents a risk of harm to injured workers. 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. 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 penalty necessary to deter future violations; to the extent reasonable, the economic benefit resulting from the prohibited act; and evidence of prior administrative violations, including Consent Order 2018-5260, which also involved inadequate medical documentation.
4. DWC considered as mitigating the fact that Respondent cooperated in this matter pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e).
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 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, 408.0231, 413.002, 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; 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, 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.
6. Pursuant to Tex. Lab. Code § 415.003(2), (5), and (6), a health care provider commits an administrative violation by administering improper, unreasonable, or medically unnecessary treatment or services; violating a commissioner rule; or, failing to comply with a provision of the Texas Labor Code.

Failure to Provide Treatment and Documentation in Accordance with the ODG

7. Pursuant to 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 pursuant to Tex. Lab. Code § 401.011(22-a). When a healthcare provider recommends medical care that falls outside the recommendations of the ODG, the health care provider must document the rationale for the exception to the ODG under Appendix D of the ODG.
8. 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.
9. Respondent violated Tex. Lab. Code § 415.003(2), (5), and (6); and 28 Tex. Admin. Code § 137.100 each time Respondent provided medically unnecessary services that were not in accordance with the applicable edition of the ODG and then failed to justify the deviation from the ODG.
10. Respondent violated Tex. Lab. Code § 415.003(a)(5) and 28 Tex. Admin. Code §§ 137.100 and 180.22(a) each time Respondent provided medical services to injured workers that were not in accordance with the applicable edition of the ODG and

then failed to document the rationale for these deviations from the ODG in the injured employees' medical records.

### **Order**

It is ordered that Richard Simon Levy, M.D. must:

1. Pay an administrative penalty of \$3,000 within 30 days from the date the Commissioner signs this order. After receiving an invoice, Dr. Levy 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; and
2. Attend and successfully complete the Medical Record Keeping Seminar offered by the Center for Personalized Education for Professionals (CPEP) within 180 days from the date of this Order. Upon registry, Respondent shall execute any required authorization needed to provide a complete copy of the results to DWC. Confirmation of the attendance and completion of the workshop must be provided to DWC within 14 days of completion. You may email confirmation of your successful completion of the course to [DWC\\_Enforcement@tdi.texas.gov](mailto:DWC_Enforcement@tdi.texas.gov).
3. Attend and successfully complete six hours of continuing medical education (CME) approved for Category I credits by the American Medical Association or the American Osteopathic Association, in the topic of **shoulder arthroscopy or orthopedic shoulder surgery** within 180 days from the date of this Order. 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. You may email confirmation of your successful completion of the course(s) to [DWC\\_Enforcement@tdi.texas.gov](mailto:DWC_Enforcement@tdi.texas.gov). Prior to the execution of this order, Dr. Levy requested approval for, and the following courses are pre-approved to count toward the required six hours of CME: *ICL360: Treatment Following a First-Time Shoulder Dislocation* offered by the American Academy of Orthopaedic Surgeons.

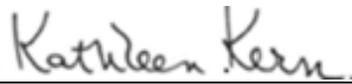
4. Purchase and maintain a current subscription to the Official Disability Guidelines- Treatment in the Workers' Comp (ODG) published by Work Loss Data Institute, for one year following the date of this Order. Confirmation of purchase of a subscription to the current ODG must be provided to DWC within 14 days of the date of this Order.

Respondent may email confirmation of the successful completion of the course(s) and ODG subscription to [DWC\\_Enforcement@tdi.texas.gov](mailto:DWC_Enforcement@tdi.texas.gov), or 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:



Kathleen Kern  
Staff Attorney, Enforcement  
Compliance and Investigations  
TDI, Division of Workers' Compensation

Unsworn Declaration

STATE OF Texas

§

COUNTY OF Dallas

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Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is:

RICHARD SIMON LEVY. My license number  
(First) (Middle) (Last)

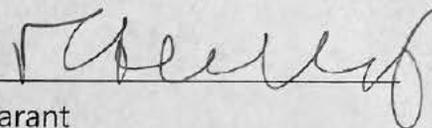
is MDK0891, which was issued by the TMB.

(Licensing agency/board/entity)

My business address is:

6901 Smider Plaza #200 Dallas, TX 75205  
(Street) (City) (County) (State) (ZIP Code)

I am executing this declaration as part of my assigned duties and responsibilities. I declare under penalty of perjury that the facts stated in this document are true and correct.

  
Declarant

Executed on 12/22, 2023.