

No. 2020

6272

Confidential Information Redacted
Texas Labor Code §§402.083 & 402.092

OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF WORKERS' COMPENSATION

Date: **MAR 04 2020**

Subject Considered:

ACS PRIMARY CARE PHYS SW PA
P.O. Box 636018
Cincinnati, Ohio 45263-6018

CONSENT ORDER
TDI-DWC ENFORCEMENT FILE NO. 22770

General remarks and official action taken:

The commissioner of workers' compensation (commissioner) considers whether disciplinary action should be taken against ACS Primary Care PHYS SW PA (ACS Primary).

WAIVER

ACS Primary acknowledges that the Texas Labor Code and other applicable laws provide certain rights. ACS Primary 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 makes the following findings of fact:

1. ACS Primary is a health care provider operating within the Texas workers' compensation system.

**IMPROPERLY PURSUING A PRIVATE CLAIM AGAINST
AN INJURED EMPLOYEE**

2. ACS Primary provided health care services to the injured employee on [REDACTED], in connection with a workers' compensation injury.
3. ACS Primary billed the injured employee's workers' compensation insurance carrier on [REDACTED]. The insurance carrier denied the claim based on entitlement to benefits on [REDACTED].
4. On [REDACTED], and [REDACTED] ACS Primary billed the injured employee \$ [REDACTED] for health care services it provided in connection with the workers' compensation injury.

5. No finding had been made determining that the injured employee had violated TEX. LAB. CODE § 408.022 in selecting a treating doctor, nor had there been a final adjudication that the claim was not compensable.

ASSESSMENT OF SANCTION

6. Improperly billing an injured employee for health care services has the potential to impose an undue financial burden on the injured employee and circumvents the Texas workers' compensation system and the roles of its system participants.
7. In assessing the sanction for this case, Texas Department of Insurance, Division of Workers' Compensation (DWC) appropriately and fully considered the following factors set forth 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 demonstrated good faith of the violator, including actions taken to rectify the consequences of the prohibited act;
 - the penalty necessary to deter future violations;
 - whether the administrative violation has negative impact on the delivery of benefits to an injured employee;
 - the history of compliance with electronic data interchange requirements;
 - other matters that justice may require, including but not limited to:
 - Performance Based Oversight assessments;
 - the promptness and earnestness of 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; and
 - to the extent reasonable, the economic benefit resulting from the prohibited act.
8. In assessing the sanction for this case, DWC found no additional mitigating factors and found the following factors set forth 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; and the penalty necessary to deter future violations.
9. ACS Primary acknowledges that it has communicated with DWC regarding the relevant statutes and rules violated; the facts establishing that the administrative violation occurred; and the appropriateness of the proposed sanction, including how DWC considered the factors under TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e).
10. ACS Primary acknowledges that, in assessing the sanction, DWC considered the factors set forth in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e).

CONCLUSIONS OF LAW

The commissioner makes the following conclusions of law:

1. The commissioner has jurisdiction over this matter pursuant to TEX. LAB. CODE §§ 402.001, 402.00111, 402.00114, 402.00116, 402.00128, and 414.002.
2. The commissioner has authority to informally dispose of this matter as set forth under TEX. GOV'T CODE § 2001.056, TEX. LAB. CODE § 402.00128(b)(7), and 28 TEX. ADMIN. CODE § 180.26(h).
3. Pursuant to TEX. LAB. CODE § 415.021, the commissioner may assess an administrative penalty against a person who commits an administrative violation.
4. Pursuant to TEX. LAB. CODE § 415.003(6), a health care provider commits an administrative violation if it fails to comply with a provision of the Texas Workers' Compensation Act.
5. Pursuant to TEX. LAB. CODE § 413.042, a health care provider commits an administrative violation if it pursues a private claim against a workers' compensation claimant for all or part of the cost of a health care service provided to the injured employee by the provider unless the injury is finally adjudicated as not compensable or the employee violates TEX. LAB. CODE § 408.022 relating to the selection of a doctor.
6. ACS Primary violated TEX. LAB. CODE §§ 413.042 and 415.003(6) when it improperly billed an injured employee for workers' compensation health care services provided.

ORDER

ACS Primary Care PHYS SW PA is ORDERED to pay an administrative penalty of \$2,000 within 30 days from the date of this Order.

The administrative penalty must be paid by company check, cashier's check, or money order made payable to the "State of Texas." Mail the administrative penalty to the Texas Department of Insurance, Attn: DWC Enforcement, MC 9999, P.O. Box 149104, Austin, Texas, 78714-9104.



Cassie Brown
Commissioner of Workers' Compensation

Approved as to Form and Content:



Amy Norman
Staff Attorney, DWC Enforcement
Texas Department of Insurance

