

No. 2020-6337

Confidential Information Redacted  
Texas Labor Code §§402.083 & 402.092

**OFFICIAL ORDER**  
*of the*  
**TEXAS COMMISSIONER OF WORKERS' COMPENSATION**

**Date:** 04-30-2020

**Subject Considered:**

**TEXAS PULMONARY CONSULTANTS**

P.O. Box 612344  
Dallas, Texas 75261-2344

**CONSENT ORDER**

TDI-DWC ENFORCEMENT FILE NO. 17904

**General remarks and official action taken:**

The commissioner of workers' compensation (commissioner) considers whether disciplinary action should be taken against Texas Pulmonary Consultants.

**WAIVER**

Texas Pulmonary Consultants acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Texas Pulmonary Consultants 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. Texas Pulmonary Consultants is a health care facility operating within the Texas workers' compensation system.

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

2. Texas Pulmonary Consultants provided services to the injured employee on [REDACTED], in connection with a workers' compensation injury.
3. On [REDACTED], Texas Pulmonary Consultants billed the injured employee for services provided on [REDACTED].
4. Texas Pulmonary Consultants knew the injury was a work-related injury because on [REDACTED], Texas Pulmonary Consultants received a "No Bill" letter from the Texas Department of Insurance, Division of Workers' Compensation (DWC). Additionally, the bill dated [REDACTED], indicates adjustments were made due to workers' compensation.

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

### ASSESSMENT OF SANCTION

6. 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.
7. In assessing the sanction for this case, 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 Base 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 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; the penalty necessary to deter future violations; and other matters that justice may require, including but not limited to, the promptness and earnestness of actions to prevent future violations.
9. 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 history and extent of previous administrative violations and the demonstrated good faith of the violator, including actions taken to rectify the consequences of the prohibited act.
10. Texas Pulmonary Consultants 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).

11. Texas Pulmonary Consultants 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, and 402.00128.
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. Texas Pulmonary Consultants violated TEX. LAB. CODE §§ 413.042 and 415.003(6), when it improperly billed an injured employee for workers' compensation health care services provided.

COMMISSIONER'S ORDER  
Texas Pulmonary Consultants  
TDI-DWC Enforcement File No. 17904  
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**ORDER**

Texas Pulmonary Consultants is ORDERED to pay an administrative penalty of \$2,000 within 30 days from the date of this Order.

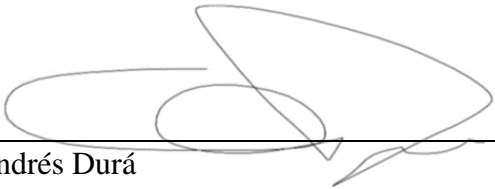
The administrative penalty must be paid by company check, cashier's check, or money order made payable to the "State of Texas." Mail the administrative penalty to the Texas Department of Insurance, Attn: DWC Enforcement, MC 9999, P.O. Box 149104, Austin, Texas, 78714-9104.



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Cassie Brown  
Commissioner of Workers' Compensation

Approved as to Form and Content:



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Andrés Durá  
Staff Attorney, DWC Enforcement  
Texas Department of Insurance

