

No. 2021-6738

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

Date: 03-22-2021

Subject Considered:

Envision Health d/b/a
ABK Emergency Physicians
P.O. Box 42958
Philadelphia, Pennsylvania 19101-2958

Consent Order
DWC Enforcement File No. 22532

General remarks and official action taken:

This is a consent order with ABK Emergency Physicians. The commissioner of the Texas Department of Insurance, Division of Workers' Compensation (DWC) considers whether DWC should take disciplinary action against ABK Emergency Physicians.

Waiver

ABK Emergency Physicians acknowledges that the Texas Labor Code and other applicable laws provide certain rights. ABK Emergency Physicians 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. ABK Emergency Physicians is a health care provider operating in the Texas workers' compensation system.
2. ABK Emergency Physicians was not selected to be tiered in the 2007, 2009, 2011, 2013, 2015, 2017, or 2019 Performance Based Oversight (PBO) assessments.

Improperly Pursuing a Private Claim against an Injured Employee

3. On [REDACTED], ABK Emergency Physicians provided medical services to an injured employee.
4. On [REDACTED], and [REDACTED], ABK Emergency Physicians sent a bill to the injured employee for the health care services it provided on [REDACTED].
5. On [REDACTED], DWC sent a letter to ABK Emergency Physicians to inform it of the injured employee's status as a workers' compensation claimant and direct it to cease billing the injured employee.
6. On [REDACTED], the workers' compensation insurance carrier for the injured employee sent an explanation of benefits to ABK Emergency Physicians, which stated the medical services were for a workers' compensation claim and to cease billing the injured employee.
7. On [REDACTED], ABK Emergency Physicians sent a bill to the injured employee for the health care services it provided on [REDACTED].
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 heightened awareness of the legal duty to comply with the Texas Workers' Compensation Act and DWC rules.
4. DWC found the following factors in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e) to be mitigating: promptness and earnestness in responding to DWC; documentation and implementation of improved processes to prevent billing of workers' compensation claimants; and ABK Emergency Physicians is no longer pursuing payment from the injured employee for the rendered medical services.
5. ABK Emergency Physicians acknowledges it communicated with DWC about the relevant statutes and rules it violated; the facts establish that the administrative violation occurred; and 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).
6. ABK Emergency Physicians 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, 414.003, 415.002, and 415.021.
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)(7), and 28 TEX. ADMIN. CODE § 180.26(h).
3. ABK Emergency Physicians 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 § 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.
6. 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 it provides to the injured employee 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.
7. ABK Emergency Physicians violated TEX. LAB. CODE §§ 413.042 and 415.003(6) when it improperly billed an injured employee for workers' compensation health care services it provided.

Order

It is ordered that ABK Emergency Physicians must pay an administrative penalty of \$3,000 within 30 days from the date of this order. ABK Emergency Physicians 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.



Cassie Brown
Commissioner of Workers' Compensation

Approved Form and Content:



Mackenzie Arthur
Staff Attorney, Enforcement
Compliance and Investigations
Division of Workers' Compensation

Affidavit

STATE OF Georgia

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COUNTY OF Cobb

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Before me, the undersigned authority, personally appeared Deserae Gordon, who being by me duly sworn, deposed as follows:

"My name is Deserae Gordon. I am of sound mind, capable of making this statement, and have personal knowledge of these facts which are true and correct.

I hold the office of Litigation Counsel and am the authorized representative of ABK Emergency Physicians. I am duly authorized by the organization to execute this statement.

ABK Emergency Physicians has knowingly and voluntarily entered into this consent order and agrees with and consents to the issuance and service of this consent order."



Affiant

SWORN TO AND SUBSCRIBED before me on March 11, 2021, 2021.

(NOTARY SEAL)

Signature of Notary Public

Printed Name of Notary Public

Commission Expiration

Confidential Information Redacted
Texas Labor Code §§402.083 and 402.092