

No. **3973**

OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF WORKERS' COMPENSATION

Date: **MAY 19 2015**

Subject Considered:

THOMAS DUNN, PT
P.O. Box 128
Bellaire, Texas 77402-0128

CONSENT ORDER
TDI ENFORCEMENT FILE NO. 8456

General remarks and official action taken:

The commissioner of workers' compensation considers whether disciplinary action should be taken against Thomas Dunn, PT (Dunn).

WAIVER

Dunn acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Dunn 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 of workers' compensation makes the following findings of fact:

1. Dunn is a physical therapist in the Texas workers' compensation system. Dunn holds Texas Board of Physical Therapy Examiners License Number 1017408.
2. Dunn was not selected to be tiered in the 2007, 2009, 2011, or 2013 Performance Based Oversight assessments.
3. The Texas Department of Insurance, Division of Workers' Compensation conducted a review of medical bills submitted by Dunn. The division randomly selected 100 medical bills for review from a sample of 427 medical bills with dates of service ranging from March 1, 2014, to June 30, 2014. The sample was extracted from Medical State Reporting data collected and maintained by the division.

4. When a health care provider submits a bill for professional services on paper, the paper medical bill is required to be filed on the applicable version of the Centers for Medicare and Medicaid Services 1500 Health Insurance Claim Form (CMS-1500). All information submitted on required paper billing forms must be legible and completed in accordance with division rules.
5. Dunn entered his National Provider Identifier (NPI) number as the rendering provider in box 24 J of the CMS-1500 form for all 100 bills reviewed. However, the medical records do not indicate that Dunn was the rendering provider in any of the 100 bills reviewed.
6. ~~Dunn appended the GP modifier to American Medical Association (AMA) Current Procedural Terminology (CPT) codes 95831 and 95832, manual muscle testing, in box 24 D of the CMS-1500 form. Appending the GP modifier to a CPT code indicates that the service was provided by a physical therapist, or that it was provided by another qualified person under an outpatient physical therapy plan of care. There is no evidence in the medical records to support that CPT codes 95831 and 95832 were performed by a physical therapist, or any other qualified person pursuant to an outpatient physical therapy plan of care.~~
7. This consent order, and the actions required hereby, is entered into in the nature of compromise and settlement and in order to avoid the time, trouble, and expense of resolving this dispute through administrative or judicial proceedings. This consent order resolves all issues related to TDI Enforcement File No. 8456. Thomas Dunn, PT neither admits nor denies the allegations contained herein.

CONCLUSIONS OF LAW

The commissioner of workers' compensation makes the following conclusions of law:

1. The commissioner of workers' compensation has jurisdiction over this matter pursuant to TEX. LAB. CODE ANN. §§ 402.001, 402.00111, 402.00114, 402.00116, 402.00128, 413.011, 415.003, 415.021, and 415.0215; 28 TEX. ADMIN. CODE §§ 133.10, 133.20, 134.203, 180.1 and 180.26; and TEX. GOV'T CODE ANN. §§ 2001.051-2001.178.
2. The commissioner of workers' compensation has authority to informally dispose of this matter as set forth herein under TEX. GOV'T CODE ANN. § 2001.056, TEX. LAB. CODE ANN. §§ 401.021 and 402.00128(b)(7), and 28 TEX. ADMIN. CODE § 180.26(h).
3. Pursuant to TEX. LAB. CODE ANN. § 415.021, in addition to any sanction, administrative penalty, or other remedy authorized by this subtitle, the

commissioner of workers' compensation may assess an administrative penalty against a person who commits an administrative violation.


4. Pursuant to TEX. LAB. CODE ANN. § 415.0215(a) and 28 TEX. ADMIN. CODE § 180.26(c), the division may impose sanctions against any person or system participant regulated by the division if the person or system participant commits an administrative violation, and the sanctions the commissioner and division may impose include suspension from practice before the division and revocation of the right to receive reimbursement under the Act.
5. Pursuant to TEX. LAB. CODE ANN. § 415.003(5), a health care provider commits an administrative violation if the person violates a commissioner rule.
6. Pursuant to TEX. LAB. CODE ANN. § 413.011(a), the commissioner shall adopt the most current reimbursement methodologies, models, and values or weights used by the Federal Centers for Medicare and Medicaid Services, including applicable payment policies relating to coding, billing, and reporting, and may modify documentation requirements as necessary to meet the requirements of Section 413.053.
7. Pursuant to 28 TEX. ADMIN. CODE § 133.10 (b)(1) health care providers, including those providing services for a certified workers' compensation health care network as defined in Insurance Code Chapter 1305 or to political subdivisions with contractual relationships under Labor Code § 504.053(b)(2), shall submit paper medical bills for payment on the applicable version of the 1500 Health Insurance Claim Form (CMS-1500).
8. Pursuant to 28 TEX. ADMIN. CODE § 133.10(f)(1)(U) and (V), all information submitted on required paper billing forms must be legible and completed in accordance with this section. The parenthetical information following each term in this section refers to the applicable paper medical billing form and the field number corresponding to the medical billing form. The following data content or data elements are required for complete professional or non-institutional medical bill related to Texas workers' compensation health care: (U) rendering provider's state license number is required when the rendering provider is not the billing provider listed in CMS-1500/field 33; the billing provider shall enter the 'OB' qualifier and the license type, license number, and jurisdiction code; and (V) rendering provider's NPI number is required when the rendering provider is not the billing provider listed in CMS-1500/field 33 and the rendering provider is eligible for an NPI number.
9. Dunn violated 28 TEX. ADMIN. CODE § 133.10(f)(1)(U) and (V) when he listed his NPI number in box 24 J of the CMS-1500 because he was not the rendering provider.

10. Pursuant to 28 TEX. ADMIN. CODE § 133.20(c), a health care provider shall include correct billing codes from the applicable Division fee guidelines in effect on the date(s) of service when submitting medical bills.
11. Dunn violated 28 TEX. ADMIN. CODE § 133.20(c), when he did not include the correct billing codes from the applicable Division fee guidelines.
12. Pursuant to 28 TEX. ADMIN. CODE § 134.203(a)(5), "Medicare payment policies" when used in this section, shall mean reimbursement methodologies, models, and values or weights including its coding, billing, and reporting payment policies as set forth in the Centers for Medicare and Medicaid Services (CMS) payment policies specific to Medicare.
13. Pursuant to 28 TEX. ADMIN. CODE § 134.203(b)(1), for coding, billing, reporting, and reimbursement of professional medical services, Texas workers' compensation system participants shall apply the following: Medicare payment policies, including its coding; billing; correct coding initiatives (CCI) edits; modifiers; bonus payments for health professional shortage areas (HPSAs) and physician scarcity areas (PSAs); and other payment policies in effect on the date a service is provided with any additions or exceptions in the rules.
14. Centers for Medicare and Medicaid Services (CMS), Claims Processing Manual 100-4, Chapter 5, Section 20 defines use of the GP modifier. AMA CPT Codes 95831 and 95832 are defined as "sometimes therapy" codes in the 2014 annual CMS therapy update. The use of the GP modifier along with CPT codes 95831 and 95832 is limited to services provided by a physical therapist, or a non-therapist pursuant to an outpatient physical therapy plan of care.
15. Dunn violated 28 TEX. ADMIN. CODE § 133.20(c) and 28 TEX. ADMIN. CODE § 134.203 (b)(1) each time he improperly appended modifier GP to CPT codes 95831 and 95832 on the CMS-1500 forms.

ORDER

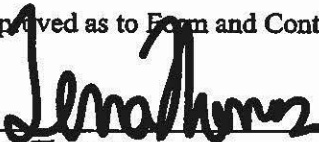
Thomas Dunn, PT is ORDERED to pay an administrative penalty of \$50,000 within 30 days from the date of this order. Payment must be paid by company check, cashier's check, or money order made payable to the "State of Texas," and mailed to the Texas Department of Insurance, Compliance Division-DWC, MC-9999, P.O. Box 149104, Austin, Texas 78714-9104.

It is FURTHER ORDERED that Thomas Dunn, PT voluntarily agrees to permanently remove himself from the Texas Workers' Compensation system as a health care practitioner. Thomas Dunn, PT agrees that he will not participate in treating, examining, and/or consulting with other physicians regarding injured employees who are covered under the Texas Workers' Compensation system. Additionally, Thomas Dunn, PT agrees that he will not receive direct or indirect remuneration from the Texas Workers' Compensation system.



W. Ryan Branman
Commissioner of Workers' Compensation

Approved as to Form and Content:



Terra Thomas
Staff Attorney, Compliance Division
Texas Department of Insurance

AFFIDAVIT

STATE OF TEXAS §
 §
COUNTY OF Harris §

Before me, the undersigned authority, personally appeared the affiant, Thomas Dunn, PT, who being by me duly sworn, deposed as follows:

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

I have knowingly and voluntarily entered into the foregoing consent order and agree with and consent to the issuance and service of the same by the commissioner of workers' compensation of the State of Texas."

Thomas Dunn P.T.
Affiant

SWORN TO AND SUBSCRIBED before me on 15th of May, 2015.

(NOTARY SEAL)

Marci Mendez
Signature of Notary Public

Marci Mendez
Printed Name of Notary Public

