

No. **2023-8164**

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

Date: 8/31/2023

Subject Considered:

Anthony Owusu, Jr., M.D.
200 Valley Wood Drive
Woodlands, Texas 77380

Consent Order
DWC Enforcement File No. 28533 & 29660

General remarks and official action taken:

This is a consent order with Anthony Owusu, Jr., 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 (HCP) operating in the Texas workers' compensation system.
2. On June 3, 2013, the Texas Medical Board issued physician license No. P6882 to Respondent.
3. Respondent was a designated doctor (DD) in the Texas workers' compensation system. Respondent was first certified as a DD on Apr. 10, 2018. Respondent's certification as a DD expired on Apr. 11, 2022. Respondent was first certified to rate

maximum medical improvement (MMI) and assign impairment ratings (IRs) on Mar. 12, 2018. Respondent's certification to rate MMI and IRs expires on Apr. 12, 2024.

- Respondent was not selected to be tiered in the 2007, 2009, 2011, 2013, 2015, 2017, or 2019, Performance Based Oversight (PBO) assessments. Respondent was classified as "poor" tier in the 2021 PBO assessments on DWC Form-069, *Report of Medical Evaluation*.

Failure to Timely Submit a DD Report or Request for More Time

File No. 28533

- On [REDACTED] Respondent completed a DD examination (exam) of an injured employee (IE1) to determine the issues of MMI, IR, and extent of injury.
- Respondent was required to: (1) submit a DWC Form-68, *Designated Doctor Examination Data Report*, DWC-69, *Report of Medical Evaluation (DWC-69)*, and *Narrative Report*, (collectively the DD report); or (2) receive approval for additional time within 15 working days of the DD exam. The deadline was [REDACTED]
- Respondent filed a request for an extension of time to conduct additional testing on [REDACTED] which was 26 days late.

Medical Quality Review (MQR) No. 21-33-DD

File No. 29660

- On [REDACTED] an employee (IE2) experienced a workplace injury to both eyes.
- On [REDACTED] IE2 visited an emergency room and was treated for [REDACTED]. The ER doctor told IE2 that the injuries would take a few days to heal.
- On [REDACTED] IE2 saw a HCP for evaluation of his injuries, and was placed on restricted duty. No physical therapy was recommended. The HCP prepared a DWC Form-73, *Texas Workers' Compensation Work Status Report (Work Status Report)*, after the [REDACTED] office visit that stated that IE2 could work indoors but needed to avoid exposure to dust.

11. On [REDACTED] the HCP amended the Work Status Report to allow IE2 to return to work without restriction.
12. On [REDACTED] 2018, IE2 was evaluated at two follow up exams. The HCPs examined IE2's eyes and returned IE2 to work the same day without restrictions. The HCP who performed the evaluation on IE2 on [REDACTED] found that IE2 had reached MMI with no permanent impairment from the compensable injury.
13. On [REDACTED] a treating ophthalmologist evaluated IE2, and completed a Work Status Report allowing IE2 to return to work on [REDACTED] without restrictions.
14. On [REDACTED] Respondent performed a DD exam of IE2 to determine MMI, IR, disability, and ability to return to work. The previous HCP's records were provided to Respondent prior to the DD exam.
15. On or around [REDACTED] Respondent filed a DWC-68, and a DWC-69 for the DD exam. In the associated Work Status Report, Respondent noted that IE2 continued to suffer from symptoms that prevented him from safely returning to work and obtaining or retaining pre-injury wages between [REDACTED] and [REDACTED]. Respondent found that IE2 had not achieved MMI. Although Respondent reported performing a physical examination of IE2 on [REDACTED] Respondent failed to document a focused medical examination of IE2's [REDACTED] in the record.
16. Respondent failed to complete the forms DWC-68 and DWC-69 in the form and manner required by the division by failing to document that he performed a focused physical examination on IE2's [REDACTED], as required by the *Official Disability Guidelines* (ODG), and by failing to reference or follow the required MD Guidelines for his return-to-work determination. Moreover, Respondent failed to document a rationale for deviating from these guidelines during the [REDACTED] DD exam.
17. On [REDACTED] Respondent performed another DD exam on IE2 to establish MMI, IR, disability, and IE2's ability to return to work at DWC's request.
18. On or around [REDACTED] Respondent submitted reports (forms DWC-68 and DWC-69) for the physical examination conducted on [REDACTED] Respondent again concluded that IE2 continued to suffer from symptoms that prevented him from safely returning to work and obtaining or retaining pre-injury wages.

Respondent noted on the DD Report (DWC-69) that IE2 had not yet reached MMI but was expected to reach MMI on or about [REDACTED]

19. Respondent failed to complete the DWC-68 and DWC-69 in the form and manner required by the division by failing to document that he performed a focused physical examination on IE2's [REDACTED] as required by the ODG, and by failing to reference or follow the required MD Guidelines in his return-to-work evaluation. Moreover, Respondent failed to justify deviating from these guidelines during the [REDACTED] DD exam using evidence-based medicine.
20. Respondent's work restrictions and conclusions are inconsistent with the treating physicians' specific clinical findings, which show no work-inhibiting symptoms or conditions. Respondent failed to acknowledge or differentiate these findings in his rationale to support his decision to prevent the employee from returning to work in any capacity.

Assessment of Sanction

1. A DD's examinations and reports have significant consequences to workers' compensation claims, the benefits of injured employees, and the Texas workers' compensation system. DWC relies on DDs to comply with the rules and treatment guidelines to provide a fair and accessible dispute resolution process and to effectuate the division's goals of providing injured employees services to facilitate the employee's return to employment as soon as it is considered safe and appropriate. Failure to provide care consistent with the division's treatment guidelines hinders injured employees' access to high-quality medical care and the employee's ability to return to work as soon as it is considered safe and appropriate.
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 (EDI) 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, including the nature, circumstances, consequences, extent, and gravity of the prohibited act; the history and extent of previous administrative violations; evidence of heightened awareness of the legal duty to comply with the Act and division rules; and the penalty necessary to deter future violations.
4. DWC considered as mitigating Respondent's cooperation in the resolution of this matter pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e). Respondent has expressed a desire to voluntarily cease practice as a designated doctor in the Texas Workers' Compensation System.
5. Respondent acknowledges communicating with DWC about the relevant statute and rule violations alleged; that the facts establish that the administrative violations 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).
6. Respondent 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, 408.1225, 413.002, 413.044, 413.0511, 413.0512, 414.002, 415.021, and 415.0215; 28 Tex. Admin. Code § 180.26; and Tex. Gov't Code §§ 2001.051-2001.178.
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, 402.00128(b)(6)-(7), and 415.034; and 28 Tex. Admin. Code § 180.26(h) and (i).
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.

Failure to Timely Submit a DD Report or Request for More Time

5. Pursuant to Tex. Lab. Code § 415.003(5) and 28 Tex. Admin. Code § 127.210(a)(15), the commissioner may sanction a DD for violating applicable statutes or rules while serving as a DD.
6. Pursuant to 28 Tex. Admin. Code § 127.10(c), the DD must complete his report, or receive approval for additional time, within 15 working days of the DD's physical examination of the injured employee.
7. Pursuant to 28 Tex. Admin. Code § 127.10(d), (e), and (f), a DD who determines MMI, IR, return-to-work, or other issues is required to file a DD report with DWC in the form and manner prescribed.
8. Respondent violated Tex. Lab. Code § 415.003(5) and 28 Tex. Admin. Code § 127.10(c)-(f) each time he failed to timely file a DD report or a request for more time with DWC.

Medical Quality Review (MQR) No. 21-33-DD – Failure to Adhere to Treatment Guidelines

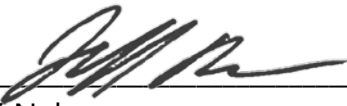
9. Pursuant to Tex. Lab. Code § 408.0231(c)(3), the commissioner may impose sanctions against a HCP based on evidence from DWC's medical records, the doctor's diagnoses, treatments, evaluations, or impairment ratings if substantially different from those the commissioner finds to be fair and reasonable.
10. Pursuant to Tex. Lab. Code § 408.0231(c)(5), HCPs must practice medicine and provide health care in an acceptable manner consistent with the public health, safety, and welfare.
11. Pursuant to Tex. Lab. Code § 408.0231(f)(7), the commissioner may impose sanctions against a doctor who commits an administrative violation, including mandatory participation in training classes.
12. Pursuant to Tex. Lab. Code § 415.003(2), a HCP commits an administrative violation if the person administers improper, unreasonable, or medically unnecessary treatment or services.
13. Pursuant to Tex. Lab. Code § 415.003(4), a HCP commits an administrative violation if the HCP violates the division's treatment guidelines, a provision of the Texas Workers' Compensation Act, or a DWC rule.
14. Pursuant to Tex. Lab. Code § 415.003(5) and (6), a HCP commits an administrative violation if the HCP violates a commissioner rule or a provision of the Texas Workers' Compensation Act.
15. Pursuant to Tex. Lab. Code § 401.011(22-a), and 28 Tex. Admin. Code § 137.100, a HCP shall provide treatment in accordance with the current edition of the ODG, which is presumed reasonable.
16. Pursuant to Tex. Admin. Code §129.5(d)(4), in reporting work status, the doctor shall file a report in the form and manner prescribed by the division containing, at a minimum, an explanation of how the employee's workers' compensation injury prevents the employee from returning to work.
17. Pursuant to 28 Tex. Admin. Code §137.10(a), HCPs shall use the disability duration values in the current edition of The Medical Disability Advisor Workplace

Guidelines (DWC's return to work guidelines) as guidelines for the evaluation of expected or average return to worktime frames.

18. Pursuant to 28 Tex. Admin. Code §137.10(c)(1), DWC's return-to-work guidelines provide disability duration expectancies. DWC return-to-work guidelines shall be presumed to be a reasonable length of disability duration and shall be used by HCPs to establish return to work goals or a return-to-work plan for safely returning injured employees to medically appropriate work environments.
19. Respondent violated Tex. Lab. Code § 415.003(2), (4), (5) and (6); and 28 Tex. Admin. Code §§ 129.5(d)(4); 137.10(a) and (c)(1); and 137.100, each time he administered improper, unreasonable, or medically unnecessary treatment or services, and each time he failed to follow DWC's return-to-work and treatment guidelines and rules.

Order

1. It is ORDERED that Anthony Owusu, Jr., M.D. must pay an administrative penalty of \$8,500 within 30 days from the date the commissioner signs the order. After receiving an invoice, Anthony Owusu, Jr., M.D., must pay the administrative penalty by electronic transfer using the State Invoice Payment Service, 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.
2. It is further ORDERED that Anthony Owusu Jr., M.D. attend and complete at least six hours of continuing medical education approved for Category I credits by the American Medical Association or the American Osteopathic Association on the topic of risk management within 180 days from the date of this Order.
3. It is further ORDERED that Anthony Owusu Jr., M.D. shall not reapply for designated doctor certification or participate as a designated doctor in the Texas workers' compensation system after 30 days from the date of this Order. Any future applications for certification received by the division shall be denied on the basis of this Order.
4. Finally, it is ORDERED that Anthony Owusu Jr., M.D. shall not practice or receive any direct or indirect remuneration from the Texas workers' compensation system as a consulting doctor under 28 Tex. Admin. Code §180.22(d), a Required Medical Examination doctor under 28 Tex. Admin. Code §180.22(f), or as a peer reviewer under 28 Tex. Admin. Code § 180.22(g), in the Texas workers' compensation system effective 30 days from the date of this Order. Any practice as described in this paragraph after the 30-day period shall constitute a violation of this Order, subjecting Respondent to further disciplinary action by the division. This Order does not apply to emergency cases, as defined by 28 Tex. Admin. Code § 133.2.



Jeff Nelson
Commissioner
TDI, Division of Workers' Compensation

Approved Form and Content:



Michelle A. McFaddin
Lead Attorney, Enforcement
TDI, Division of Workers' Compensation

