

No. 2020-6395

Confidential Information Redacted
Texas Labor Code §§402.083 & 402.092

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

Date: 07-20-2020

Subject Considered:

Travis County Emergency Physicians
P.O. Box 19000
Belfast, Maine 04915-4085

Consent Order
DWC Enforcement File Nos. 24515 and 24583

General remarks and official action taken:

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

Waiver

Travis County acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Travis County 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. Travis County is a health care provider operating in the Texas workers' compensation system.

Improperly Pursuing a Private Claim against Injured Employees

First Instance: File No. 24515

2. On [REDACTED], and [REDACTED], Travis County provided medical services to an injured employee in connection with a workers' compensation injury.
3. On [REDACTED], Travis County billed the injured employee for medical services it provided in connection with the workers' compensation injury.
4. On [REDACTED], DWC sent a letter to Travis County to inform it of the injured employee's status as a workers' compensation claimant and direct it to cease billing the injured employee.
5. On [REDACTED], Travis County sent a bill to the injured employee for the medical services provided in connection with the workers' compensation injury.
6. 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.

Second Instance: File No. 24583

7. On [REDACTED], Travis County provided medical services to an injured employee in connection with a workers' compensation injury.
8. On [REDACTED]; Travis County billed the injured employee for medical services it provided in connection with the workers' compensation injury.
9. Travis County previously billed the workers' compensation insurance carrier and was aware that the medical services were related to a workers' compensation injury.
10. 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:
 - performance based oversight 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; and the penalty necessary to deter future violations.
4. DWC found the following factors in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e) to be mitigating: the violator's demonstration of good faith, including actions it took to rectify the consequences of the prohibited act, as the healthcare provider's management office is in Ohio and they are unfamiliar with

Texas laws, but are nonetheless instituting additional training designed to ensure all documentation is captured and forwarded to the appropriate office and all workers' compensation issues are routed to the appropriate manager.

5. Travis County 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. Travis County 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, 402.00111, 402.00114, 402.00116, 402.00128, 414.002, and 414.003.
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. Travis County 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,

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or the employee violates TEX. LAB. CODE § 408.022 relating to the selection of a doctor.

7. Travis County violated TEX. LAB. CODE §§ 413.042 and 415.003(6) when it improperly billed injured employees for workers' compensation health care services it provided.

Order

It is ordered that Travis County Emergency Physicians must pay an administrative penalty of \$3,000 within 30 days from the date of this order. Travis County Emergency Physicians must pay the administrative penalty by 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 9999, P.O. Box 149104, Austin, Texas 78714-9104.



Cassie Brown
Commissioner of Workers' Compensation

Approved Form and Content:



Amy Norman
Staff Attorney, Enforcement
Compliance and Investigations
Division of Workers' Compensation

Affidavit

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

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

"My name is Matthew Patlovany. 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 President and am the authorized representative of Travis County Emergency Physicians. I am duly authorized by the organization to execute this statement.

Travis County 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 _____, 2020.

(NOTARY SEAL)

Signature of Notary Public

Printed Name of Notary Public

Commission Expiration

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