

No. 2021-6742

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

Date: 03-24-2021

Subject Considered:

Jack M. Thomas Jr., M.D.
4101 Wesley Street, Suite B
Greenville, Texas 75401-5635

Consent Order
DWC Enforcement File No. 22017

General remarks and official action taken:

This is a consent order with Jack M. Thomas Jr., M.D. (Dr. Thomas). The commissioner of the Texas Department of Insurance, Division of Workers' Compensation (DWC) considers whether DWC should take disciplinary action against Dr. Thomas.

Waiver

Dr. Thomas acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Dr. Thomas 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. Dr. Thomas holds License No. [REDACTED], which was issued by the Texas Medical Board on [REDACTED].
2. Dr. Thomas is a health care provider in the Texas workers' compensation system.
3. Dr. Thomas was not selected to be tiered in the 2007, 2009, 2011, 2013, 2015, 2017, or 2019 Performance Based Oversight (PBO) assessments.

Medical Quality Review 19-10-HCP

4. DWC, as authorized by TEX. LAB. CODE §§ 414.002 and 408.1225(b), monitors treating doctors to determine compliance with the Texas Workers' Compensation Act and DWC rules the commissioner promulgates.
5. Pursuant to TEX. LAB. CODE §§ 413.0511 and 413.0512, DWC's Medical Advisor and Medical Quality Review Panel conducted an audit-based medical quality review of five cases. In these cases, Dr. Thomas referred injured employees for neuromuscular testing. The purpose of the audit was to evaluate the appropriateness of the health care provider's decision making and recordkeeping that supports referring injured employees for neuromuscular testing.

Making Unnecessary Referrals

6. Dr. Thomas submitted unnecessary referrals to other health care providers, or performed unnecessary testing of an injured employee as part of a medical examination in 100% of the cases reviewed (five out of five cases).
7. Specifically, Dr. Thomas ordered Manual Muscular Strength Tests or Range of Motion Tests that did not meet Official Disability Guidelines (ODG) recommendations and were not necessary for the care of the patient.

Failure to File Medical Records in the Form and Manner DWC Requires

8. Dr. Thomas failed to document in the medical records the reasons why referral for additional neuromuscular testing was necessary to further treatment in 100% of the cases reviewed (five out of five cases).
9. Specifically, Dr. Thomas' medical recordkeeping was not adequate for the history, physical exam, and how the diagnostic testing would help decide a plan of care or treatment because Dr. Thomas did not document the patients' indication for testing or reasons for referring the patients for neuromuscular testing.

Submission of Inaccurate or Deficient Reports Due to Inappropriate or Unreasonable Evaluations

10. Dr. Thomas submitted inaccurate or deficient medical records because he insufficiently documented the medical history or physical examination and analysis of medical records in 100% of the cases reviewed (five out of five cases).
11. Specifically, Dr. Thomas failed to provide documentation that the results were ever reviewed, and there is no documentation on use of the results. In all five cases, Dr. Thomas' chart notes indicated "the patient was referred for range of motion testing today." However, Manual Muscle Strength Test reports for those dates indicate different tests were conducted. This occurred even when Dr. Thomas was listed in DWC billing as the referring and rendering provider of the tests. Dr. Thomas did not note or address these discrepancies.

Failure to Apply DWC Treatment Guidelines

12. Dr. Thomas failed to apply the ODG when he ordered Manual Muscular Strength Tests or Range of Motion Tests in 100% of the cases evaluated. (Five out of five cases).
13. Specifically, Dr. Thomas ordered Manual Muscular Strength Tests or Range of Motion Tests when the ODG does not provide any recommendations on separate Manual Muscular Strength Tests, strength testing, or Range of Motion testing. This information is generally obtained while conducting a typical physical examination in conjunction with an initial or recheck evaluation by the treating clinician. The test results were not used by the attending physician and the testing was not recommended by the ODG.

Assessment of Sanction

1. Failure to provide appropriate medical benefits in a timely and cost-effective manner by submitting unnecessary referrals to other health care providers and ordering unnecessary tests of an injured employee as part of a medical examination is harmful to injured employees and the Texas workers' compensation system.

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 violations, including the nature, circumstances, consequences, extent, and gravity of the prohibited act 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: to the extent reasonable, the economic benefit resulting from the prohibited act, as Dr. Thomas does not own the testing facilities and derives no economic benefit from the tests; and whether the administrative violation had a negative impact on the delivery of benefits to an injured employee, as the testing is used to indicate the effectiveness of treatments and the resulting findings indicate future treatments.
5. Dr. Thomas acknowledges he communicated with DWC about the relevant statutes and rules he 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. Dr. Thomas 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 §§ 401.021, 402.001, 402.00111, 402.00114, 402.00116, 402.00128, 408.0041, 408.1225, 413.002, 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 and 402.00128(b)(7), and 28 TEX. ADMIN. CODE § 180.26(h).
3. Dr. Thomas has knowingly and voluntarily waived all procedural rights to which he 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 § 408.0231(f)(7), the commissioner may impose sanctions against a doctor who commits an administrative violation, including mandatory participation in training classes.
6. Pursuant to TEX. LAB. CODE § 415.003(3), a health care provider commits an administrative violation if they make an unnecessary referral.
7. Pursuant to TEX. LAB. CODE § 415.003(4), a health care provider commits an administrative violation if they violate DWC's fee and treatment guidelines.
8. Pursuant to TEX. LAB. CODE § 415.003(5), a health care provider commits an administrative violation if they violate a DWC rule.

9. Pursuant to TEX. LAB. CODE § 415.003(6), a health care provider commits an administrative violation if they fail to comply with a provision of the Texas Workers' Compensation Act.
10. Pursuant to TEX. LAB. CODE § 408.0231(c)(3), one of the criteria for imposing sanctions on a doctor may include evidence from the medical records that the doctor's evaluations are, to a large extent, different from those the commissioner finds to be fair and reasonable.
11. Pursuant to TEX. LAB. CODE §§ 408.023(l) and 408.025(c) and 28 TEX. ADMIN. CODE § 180.22(c)(2), the treating doctor is responsible for efficiently applying and managing health care.
12. Pursuant to 28 TEX. ADMIN. CODE § 137.100(a), health care providers must provide treatment in accordance with the recommendations in the current edition of the ODG.
13. Dr. Thomas violated TEX. LAB. CODE §§ 415.003(4), (5), and (6) and 28 TEX. ADMIN. CODE § 180.22(c)(2) each time he made unnecessary referrals for additional testing and treatment.

Order

It is ordered that Jack M. Thomas Jr., M.D., must:

1. Pay an administrative penalty of \$3,500 within 60 days from the date of this order. Jack M. Thomas Jr., M.D., 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.
2. Attend and complete a KSTAR medical recordkeeping course within 180 days from the date of this order. Jack M. Thomas Jr., M.D., must provide to DWC confirmation that he attended and completed the workshop within 14 days of completion. Mail confirmation to the Texas Department of Insurance, Attn: Neal Bertling, DWC Enforcement Section, MC-CI, P.O. Box 12107, Austin, Texas 78711-2050.
3. Attend and complete an Ethics and Boundaries Assessment Services, LLC course within 180 days from the date of this order. Jack M. Thomas Jr., M.D., must provide to DWC confirmation that he attended and completed the workshop within 14 days of completion. Mail confirmation to the Texas Department of Insurance, Attn: Neal Bertling, DWC Enforcement Section, MC-CI, P.O. Box 12107, Austin, Texas 78711-2050.



Cassie Brown
Commissioner of Workers' Compensation

Approved Form and Content:



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

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 Collin §

Before me, the undersigned authority, personally appeared Jack M. Thomas Jr., M.D., who being by me duly sworn, deposed as follows:

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

I waive rights provided by the Texas Labor Code and other applicable law and acknowledge the jurisdiction of the Texas commissioner of workers' compensation.

I knowingly and voluntarily enter into this consent order and agree with and consent to the issuance and service of this consent order."

Jack M. Thomas Jr., M.D.
Affiant

SWORN TO AND SUBSCRIBED before me on 3/4, 2021.

(NOTARY SEAL)

Hannah T. Jones
Signature of Notary Public

HANNAH T. JONES
Printed Name of Notary Public

3/15/2021
Commission Expiration

