

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

Date: 4/12/2022

Subject Considered:

ANTHONY OWUSU JR., M.D.
13409 North West Military Highway
San Antonio, Texas 78231

Consent Order
DWC ENFORCEMENT FILE NO. 22016

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 applicable procedural rights in consideration of the entry of this consent order.

Findings of Fact

1. Respondent practices as an orthopedic surgeon and holds Texas Medical Board License No. P6882, which was issued by the Texas Medical Board on [REDACTED]. He is not board certified.
2. Respondent is a healthcare provider in the Texas Workers' Compensation system.
3. Respondent was not selected to be classified in the 2007, 2009, 2011, 2013, 2015, 2017, or 2019 Performance Based Oversight (PBO) assessments.

Medical Quality Review 19-6-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 which Respondent conducted unnecessary referrals of injured employees. The purpose of the audit was to evaluate the appropriateness of the health care provider's decision making and recordkeeping that supports Respondent's patient referrals for further medical services or testing.
6. Pursuant to TEX. ADMIN. CODE § 180.26, Respondent submitted a written request for an ISC on [REDACTED]
7. On [REDACTED] DWC scheduled an ISC on [REDACTED]
8. On [REDACTED] Respondent submitted a first written request to continue the ISC, which was granted by DWC.
9. On [REDACTED] DWC scheduled an ISC on [REDACTED]
10. On [REDACTED] Respondent submitted a second written request to continue the ISC, which was granted.
11. On [REDACTED] DWC scheduled an ISC on [REDACTED]
12. On [REDACTED] Respondent submitted a third written request to continue the ISC, which was denied.
13. On [REDACTED] Respondent appeared via video conference at an Informal Settlement Conference (ISC) upon Respondent's request and after proper notice of the evidence and violations alleged. The ISC was conducted in accordance with 28 Tex. Admin. Code §180.76. Respondent was provided an opportunity to discuss and resolve this medical case review with Arbiters appointed by the commission. Amy Norman represented DWC Enforcement. F. Gilbert Olivares represented Respondent.

Making Unnecessary Referrals and Ordering Unnecessary Testing

14. Respondent made unnecessary referrals for or ordered unnecessary neuromuscular testing for injured employees as part of his medical treatment in 100% of cases examined (five out of five).
15. Respondent ordered Manual Muscular Strength Tests (MMTs) that did not meet Official Disability Guidelines (ODG) recommendations and were not supported with adequate documentation of his medical rationale. In some instances, he ordered or performed MMTs multiple times for the injured employees during the same dates of service.

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

16. Respondent failed to document his medical rationale for the MMTs performed or the reasons for his referrals in 100% of cases examined (five out of five).
17. Respondent failed to document adequate medical histories, examinations, or indications for the diagnostic tests, and how the results would support the treatment for the injured employees.

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

18. Respondent submitted inaccurate or inappropriate medical records. He failed to document sufficient medical histories and physical examinations, as determined by an analysis of medical records in 100% of cases examined (five out of five).
19. Respondent failed to document that the MMT results were reviewed with the injured employees, and there is insufficient documentation on the results. Respondent's chart notes are inaccurate, including misstating the injured employee's gender, misapplying or misstating the type of examination performed as it relates to the chief complaint or symptoms, and utilization of incomplete templates ordering MMTs. As stated above, Respondent failed to document a medical rationale for ordering or performing MMTs for the injured employees.

Failure to Apply DWC Treatment Guidelines

20. Respondent failed to apply the ODG when he ordered MMTs in 100% of the cases evaluated (five out of five cases).

21. Specifically, Respondent ordered or performed MMTs when the ODG does not provide any recommendations on separate MMTs, strength testing, or Range of Motion testing. This information is generally obtained while conducting a typical physical examination in conjunction with an initial or follow up examination by the treating clinician.

Assessment of Sanction

22. Submitting unnecessary referrals or ordering or performing unnecessary testing for an injured employee as part of a medical examination constitutes a failure to provide appropriate medical benefits in a manner that is timely and cost effective.
23. 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.
24. 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; and the penalty necessary to deter future violations.

25. In assessing the sanction in this case, DWC found the following factors set forth in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e) to be mitigating: Respondent has ceased using the company providing the MMT tests.
26. Respondent acknowledges communicating with DWC about the relevant statute and rule violations alleged; that the facts establish that the administrative violation(s) 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).
27. 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

The commissioner makes the following 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, 413.044, 413.0511, 413.0512, and 414.002.
2. The commissioner has authority to informally dispose of this case pursuant to TEX. GOV'T CODE § 2001.056, TEX. LAB. CODE §§ 401.021, 402.00128(b)(7), and 28 TEX. ADMIN. CODE § 180.26(h).
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.
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 the person makes an unnecessary referral.

7. Pursuant to TEX. LAB. CODE § 415.003(5), a health care provider commits an administrative violation if they violate a DWC rule.
8. 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.
9. 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 substantially different from those the commissioner finds to be fair and reasonable.
10. Pursuant to TEX. LAB. CODE § 408.0231(c)(5), health care providers 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 §§ 408.023(l) and 408.025(c) and 28 TEX. ADMIN. CODE § 180.22(c)(2), the treating doctor is responsible for the efficient utilization and management of 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. Pursuant to 28 TEX. ADMIN. CODE § 180.22(c)(2), the treating doctor is the doctor primarily responsible for the efficient management of health care and maintain efficient utilization of health care.
14. Respondent violated TEX. LAB. CODE § 415.003(4), (5), and (6) each time he submitted unnecessary referrals and ordered or performed unnecessary testing for an injured employee.

ORDER

It is ordered that Anthony Owusu, Jr., M.D., must:

1. pay an administrative penalty of \$8,000 within 30 days from the date of this order. Anthony Owusu, 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. Confirmation of the attendance and completion of the workshop must be provided to DWC within 14 days of completion; and
3. attend and complete an Ethics and Boundaries Assessment Services, LLC (EBAS) course within 180 days from the date of this Order. Confirmation of the attendance and completion of the workshop must be provided to DWC within 14 days of completion.



Dan Paschal, J.D.
Deputy Commissioner
Policy & Customer Services
TDI, Division of Workers' Compensation

Approved Form and Content:



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

Confidential Information Redacted
Texas Labor Code §§402.083 and 402.092

Unsworn Declaration

STATE OF Tx

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COUNTY OF Harris

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Pursuant to the TEX. CIV. PRAC. AND REM. CODE § 132.001(a), (b), and (d), my name is
Anthony Owusu. I hold the position of Owner and am the
authorized representative of Anthony Owusu, Jr., M.D. My business address is:

13409 NW military hwy, San Antonio, Bexar, Tx, 78231.
(Street) (City) (County) (State) (ZIP Code)

I am executing this declaration as part of my assigned duties and responsibilities. I declare
under penalty of perjury that the facts stated in this document are true and correct.



Declarant

Executed on 3/17/22, 2022.

Confidential Information Redacted
Texas Labor Code §§402.083 and 402.092