

No. 2023-7779

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

Date: 2/9/2023

Subject Considered:

UT Health East Texas EMS
P.O. BOX 2060
Tyler, Texas 75710-2060

Consent Order
DWC Enforcement File No. 29052

General remarks and official action taken:

This is a consent order with UT Health East Texas EMS (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 operating in the Texas workers' compensation system.
2. Respondent was not selected to be tiered in the 2007, 2009, 2011, 2013, 2015, 2017, 2019, or 2021 Performance Based Oversight (PBO) assessments.

Improperly Pursuing a Private Claim Against an Injured Employee

3. On [REDACTED] Respondent provided medical services to an injured employee in the Texas workers' compensation system.
4. On [REDACTED] Respondent sent a bill to the injured employee for the health care services it provided on [REDACTED]
5. On [REDACTED] the injured employee's attorney notified Respondent by letter of the injured employee's status as a workers' compensation claimant and directed Respondent to refrain from directly billing the injured employee.
6. On [REDACTED] Respondent sent a bill to the injured employee's workers' compensation insurance carrier.
7. On [REDACTED] the workers' compensation insurance carrier notified Respondent by letter of the injured employee's status as a workers' compensation claimant and directed Respondent to refrain from directly billing the injured employee.
8. On [REDACTED] Respondent again sent a bill to the injured employee for the health care services it provided on [REDACTED]
9. On [REDACTED] the injured employee's attorney sent a second letter directing Respondent to refrain from directly billing the injured employee.
10. On [REDACTED] and [REDACTED] Respondent sent additional bills to the injured employee for the health care services it provided on [REDACTED]
11. 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:
 - 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; the penalty necessary to deter future violations; and other matters that justice may require, including evidence of heightened awareness of the legal duty to comply with the Texas Workers' Compensation Act and DWC rules.
4. DWC found the following factors in Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e) to be mitigating: other matters that justice may require, including, the termination of Respondent's relationship with a third-party biller; resolution of the file in question; and the implementation of a multi-tiered process to prevent similar violations in the future.
5. 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).

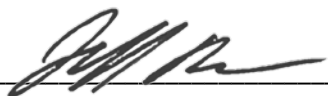
6. Respondent acknowledges that, in assessing the sanction, DWC considered the factors in Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e).

Conclusions of Law

1. The commissioner has jurisdiction over this matter pursuant to Tex. Lab. Code §§ 402.001, 402.00114, 402.00116, 402.00128, 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)(6)-(7), 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.
5. Pursuant to Tex. Lab. Code § 413.042, a health care provider commits an administrative violation by pursuing a private claim against a workers' compensation claimant for all or part of the cost of a health care service unless the injury is finally adjudicated as not compensable, or the injured employee violates Tex. Lab. Code § 408.022 relating to the selection of a doctor.
6. 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.
7. Respondent violated Tex. Lab. Code §§ 413.042 and 415.003(6) by improperly billing an injured employee for workers' compensation health care services.


Order

It is ordered that UT Health East Texas EMS must pay an administrative penalty of \$1,000 within 30 days from the date of this order. UT Health East Texas EMS 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.



Jeff Nelson
Commissioner
TDI, Division of Workers' Compensation

Approved Form and Content:



Daniel Garcia
Staff Attorney, Enforcement
Compliance and Investigations
TDI, Division of Workers' Compensation

Unsworn Declaration

STATE OF TEXAS §
§
COUNTY OF SMITH §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is **John A Smith**. I hold the position of **Chief Executive Officer** and am the authorized representative of UT Health East Texas EMS. My business address is:

352 S. Glenwood Blvd., **Tyler**, **Smith**, **Texas**, **75702**
(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 February 7, _____, 2023.