

No. **2023-8050**

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

Date: 6/21/2023

Subject Considered:

Steven J. Thornton, M.D.
Dallas Orthopedic Center
7115 Greenville Avenue, Suite 310
Dallas, Texas 75231-5103

Consent Order
DWC Enforcement File No. 29270

General remarks and official action taken:

This is a consent order with Steven Jackson Thornton, 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 holds Texas Medical Board License No. L1479, which was issued by the Texas Medical Board on February 2, 2001.
2. Respondent was a peer review doctor in the Texas workers' compensation system. The insurance carrier selected Respondent to conduct a peer review.
3. Respondent was not selected to be tiered in the 2007, 2009, 2011, and 2017 Performance Based Oversight (PBO) assessments. Respondent was classified as

"poor" tier in the 2013 and 2021 PBO assessments. Respondent was classified as "high" tier in the 2015 and 2019 PBO assessments.

Medical Quality Review (MQR) No. 20-2 PR

I. First adverse determination

4. On or around [REDACTED] Respondent conducted a preauthorization review for the following surgery requests: (1) an [REDACTED] and (2) [REDACTED]
5. On or around [REDACTED] the insurance carrier denied the request for the procedures based on Respondent's determination.
6. Respondent's report concluded that the "presented signs and symptoms were limited to support the request at this time" and "in addition, the objective response from all indicated conservative treatments ...could not be fully established ...exceptional factors were not clearly identified."
7. Respondent did not document the objective medical findings and evidence-based medicine that the recommendation was based on.
8. Respondent violated Tex. Lab. Code §§ Tex. Lab. Code § 415.003(5) and 28 Tex. Admin. Code § 180.28(a) by failing to document the objective medical findings and evidence-based medicine to that supported his opinion and by failing to provide an analysis and explanation for the recommendation including the findings and conclusions used to support the recommendation.

II. Second Adverse Determination

9. On [REDACTED] a reconsideration request was submitted based on the initial denial.
10. This reconsideration request was submitted to Respondent for review.
11. On or around [REDACTED] Respondent issued another determination.

12. In Respondent's second report, Respondent states "[p]er evidence-based guidelines, surgery is indicated after the provision of conservative care in conditions with pertinent subjective complaints and findings corroborated by imaging studies."
13. Respondent did not document the objective medical findings and evidence-based medicine that the recommendation was based on.
14. Respondent violated Tex. Lab. Code §§ Tex. Lab. Code § 415.003(5) and 28 Tex. Admin. Code § 180.28(a) by failing to document the objective medical findings and evidence-based medicine that supported his opinion and by failing to provide an analysis and explanation for the recommendation including the findings and conclusions used to support the recommendation.

Assessment of Sanction

1. Failure to provide peer review in the form and manner prescribed by DWC has a negative impact on an injured employee's entitlement to timely, appropriate, and high-quality medical care, and may have a negative impact on supporting restoration of the injured employee's physical condition and earning capacity.
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 penalty necessary to deter future violations and other matters that justice may require, including, but not limited to evidence of a heightened awareness of the legal duty to comply with the Texas Workers' Compensation Act and DWC rules.
 4. DWC is aware of no mitigating factors pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e).
 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 §§ 401.021, 402.001, 402.00111, 402.00114, 402.00116, 402.00128, 408.0041, 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. 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 utilization review is, to a large extent, different from those the commissioner finds to be fair and reasonable.

4. 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.
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(5) and (6), a health care provider commits an administrative violation if the person violates a provision of the Texas Workers' Compensation Act, or a DWC rule.
7. Pursuant to Tex. Lab. Code § 415.021, the commissioner may assess an administrative penalty against a person who commits an administrative violation.
8. Pursuant to 28 Tex. Admin. Code § 180.22(g), a peer reviewer is a health care provider who performs an administrative review at the insurance carrier's request without a physical examination of the injured employee. Further, a peer reviewer who performs a prospective, concurrent, or retrospective review of the medical necessity or reasonableness of health care services (utilization review) is subject to the applicable provisions of the Labor Code; Insurance Code, Chapters 1305 and 4201; and department and division rules.
9. Pursuant to 28 Tex. Admin. Code § 180.28(a), a peer reviewer's report shall document the objective medical findings and evidence-based medicine that supports the opinion as well as an analysis and explanation for the peer review recommendation, including the findings and conclusions used to support the recommendations.
10. Respondent violated Tex. Lab. Code §§ Tex. Lab. Code § 415.003(5) and 28 Tex. Admin. Code § 180.28(a) by failing to document the objective medical findings and evidence-based medicine to that supported his opinion and by failing to provide an analysis and explanation for the recommendation including the findings and conclusions used to support the recommendation.

Order


It is ordered that Steven J. Thornton, M.D must:

Pay an administrative penalty of \$2,500 within 30 days from the date of this order. The administrative penalty must be paid 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 TX

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COUNTY OF DALLAS

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Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is Steven Thornton. I hold the position of orthopaedic surgeon and am the authorized representative of Steven J. Thornton, M.D. My business address is:

7115 Greenville Ave, DALLAS, Dallas, TX, 75231.

(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.

Steven J. Thornton
Declarant

Executed on May 8, 2023.