

No. 2019 6055

Confidential Information Redacted  
Texas Labor Code §§402.083 and 402.092

**OFFICIAL ORDER**  
*of the*  
**TEXAS COMMISSIONER OF WORKERS' COMPENSATION**

Date: AUG 21 2019

**Subject Considered:**

**JAIRAJ SAYANI, M.D.**  
1345 Valwood Parkway, Suite 306  
Carrollton, Texas 75006-6891

**CONSENT ORDER**  
TDI-DWC ENFORCEMENT FILE NO. 17412

**General remarks and official action taken:**

The commissioner of workers' compensation (commissioner) considers whether disciplinary action should be taken against Jairaj Sayani, M.D. (Dr. Sayani).

**WAIVER**

Dr. Sayani acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Dr. Sayani waives all of these rights and any other applicable procedural rights in consideration of the entry of this consent order.

**FINDINGS OF FACT**

The commissioner makes the following findings of fact:

1. Dr. Sayani was granted a license by the Texas Medical Board on [REDACTED] Dr. Sayani holds Texas Medical License Number [REDACTED]
2. Dr. Sayani was classified as "Poor" tier for the 2017 DWC Form-73 Completeness Measure and "Average" tier for the DWC Form-73 Documentation Measure Performance Based Oversight (PBO) assessments. Dr. Sayani was not classified in the 2007, 2009, 2011, 2013, or 2015 PBO assessments.

**MEDICAL QUALITY REVIEW NO. 18-37HCP**

3. The Texas Department of Insurance, Division of Workers' Compensation (DWC), as authorized by TEX. LAB. CODE §§ 414.002 and 408.1225(b), monitors system participants to determine compliance with the Texas Workers' Compensation Act and rules promulgated by the commissioner.
4. Pursuant to the requirements of TEX. LAB. CODE §§ 413.0511 and 413.0512, DWC's Medical Advisor and Medical Quality Review Panel conducted an audit-based medical quality review (MQR No. 18-37 HCP) of 10 cases in which Dr. Sayani ordered a magnetic resonance image (MRI) of the lumbar spine. Case #2 did not meet the audit criteria and

therefore, Case #11 was added. The purpose of the audit was to evaluate the application of the *Official Disability Guidelines-Treatment in Workers' Comp* (ODG) by Dr. Sayani to determine the medical necessity and appropriateness of ordering an MRI before at least one month of conservative therapy.

#### UNREASONABLE OR UNNECESSARY REFERRAL FOR SERVICES

- 5.e Dr. Sayani ordered an MRI of the lumbar spine that was not reasonable or necessary in [REDACTED] of cases evaluated [REDACTED]
- 6.e Additionally, Dr. Sayani failed to document the rationale or justification for ordering an MRI of the lumbar spine before at least one month of conservative therapy.e

#### FAILURE TO APPLY DWC TREATMENT GUIDELINES

- 7.e Dr. Sayani failed to apply the ODG when he ordered an MRI of the lumbar spine in [REDACTED] of cases evaluated [REDACTED]
- 8.e Specifically, Dr. Sayani ordered an MRI of the lumbar spine without first providing at least one month of conservative therapy to the injured employee, as recommended in the ODG;e and Dr. Sayani did not provide a basis for a reasonable deviation or exception to the ODG guidelines when ordering an MRI of the lumbar spine.e

#### TREATMENTS AND EVALUATIONS WERE SUBSTANTIALLY DIFFERENT FROM WHAT THE COMMISSIONER FINDS TO BE FAIR AND REASONABLE

- 9.e Dr. Sayani's treatments and evaluations were substantially different from what the commissioner finds to be fair and reasonable in [REDACTED] of cases examined [REDACTED]
- 10.e Specifically, Dr. Sayani failed to document the rationale or justification for ordering an MRI of the lumbar spine before at least one month of conservative therapy.e

#### ASSESSMENT OF SANCTION

- 11.e Ordering or performing tests of an injured employee without applying the ODG impose possibly unnecessary testing and extraneous medical costs on the Texas workers'e compensation system.e
- 12.e In assessing the sanction for this case, DWC appropriately and fully considered the following factors set forth in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE §e 180.26(e):e

- e the seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the prohibited act;e
- e the history and extent of previous administrative violations;e
- e the demonstrated good faith of the violator, including actions taken to rectify the consequences of the prohibited act;e

- the penalty necessary to deter future violations;
  - whether the administrative violation has negative impact on the delivery of benefits to an injured employee;
  - the history of compliance with electronic data interchange requirements;
  - other matters that justice may require, including but not limited to:
    - PBO assessments;
    - the promptness and earnestness of 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; and
  - to the extent reasonable, the economic benefit resulting from the prohibited act.
13. In assessing the sanction for 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 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; other matters that justice may require, including but not limited to PBO assessments.
14. In assessing the sanction for 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: other matters that justice may require, including the promptness and earnestness of actions to prevent future violations.
15. Dr. Sayani acknowledges that DWC and Dr. Sayani have communicated regarding the relevant statutes and rules violated; the facts establishing that the administrative violation occurred; and the appropriateness of the proposed sanction, including how DWC considered the factors under TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e).
16. Dr. Sayani acknowledges that, in assessing the sanction, DWC considered the factors set forth 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 §§ 402.001, 402.00111, 402.00114, 402.00116, 402.00128, 413.002, 413.0511, 413.0512, 414.002, and 415.021.
2. The commissioner has authority to informally dispose of this matter as set forth herein under TEX. GOV'T CODE § 2001.056; TEX. LAB. CODE §§ 401.021, 402.00128(b)(7), and 415.034; and 28 TEX. ADMIN. CODE § 180.26(h).

3. Pursuant to TEX. LAB. CODE § 415.021, in addition to any sanction, administrative penalty, or other remedy authorized by this subtitle, the commissioner may assess an administrative penalty against a person who commits an administrative violation.
4. 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.
5. 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.
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. Dr. Sayani violated TEX. LAB. CODE §§ 408.0231(c)(3) and 415.003(3) each time he ordered an MRI of the lumbar spine that was not reasonable or necessary.
8. Pursuant to TEX. LAB. CODE § 415.003(4), a health care provider commits an administrative violation if the person violates DWC's fee and treatment guidelines.
9. Pursuant to TEX. LAB. CODE § 415.003(5), a health care provider commits an administrative violation if the person violates a commissioner rule.
10. Pursuant to 28 TEX. ADMIN. CODE § 137.100(a), health care providers shall provide treatment in accordance with the current edition of the ODG.
11. Dr. Sayani violated TEX. LAB. CODE §§ 415.003(4) and (5) when he failed to apply the ODG and when he failed to provide a basis for a reasonable deviation or exception to the ODG when ordering an MRI of the lumbar spine before at least one month of conservative therapy.
12. Pursuant to TEX. LAB. CODE § 415.003(6), a health care provider commits an administrative violation if the person fails to comply with a provision of the Texas Workers' Compensation Act.
13. 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.
14. Dr. Sayani violated TEX. LAB. CODE §§ 408.0231(c)(3), 415.003(5), and 415.003(6) each time he unreasonably ordered an MRI of the lumbar spine before at least one month of conservative therapy without documenting the rationale or justification for doing so.

2019 6055

Jairaj Sayani, M.D. is ORDERED:

1. To pay an administrative penalty of \$3,000 within 30 days from the date of this Order;
2. To purchase and maintain a current subscription to the *Official Disability Guidelines—Treatment in Workers' Comp*, published by Work Loss Data Institute, for one year following the date of this Order. Confirmation of the purchase of the first year of subscription must be provided to DWC within 14 days of the date of this Order.
3. To attend and complete a KSTAR Medical Record Keeping 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.

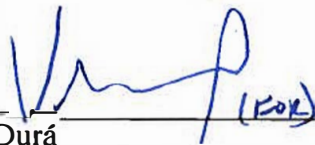
The administrative penalty must be paid by company check, cashier's check, or money order made payable to the "State of Texas." Dr. Sayani must mail the administrative penalty to the Texas Department of Insurance, Attn: DWC Enforcement, MC 9999, P.O. Box 149104, Austin, Texas, 78714-9104.

Dr. Sayani must mail certificates of completion to the Texas Department of Insurance, Attn: Mary Hughes, DWC Enforcement, 7551 Metro Center Drive, Suite #100, MS-11, Austin, Texas 78744.



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Cassie Brown *NCR*  
Commissioner of Workers' Compensation

Approved as to Form and Content:



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Andrés Durá  
Staff Attorney, DWC Enforcement  
Texas Department of Insurance

