

No. 2020-6490

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

Date: 9-30-2020

Subject Considered:

Basin Emergency Physicians, PLLC
P.O. Box 3495
Toledo, Ohio 43607

Consent Order
DWC Enforcement File No. 21271

General remarks and official action taken:

This is a consent order with Basin Emergency Physicians, PLLC (Basin). The commissioner of the Texas Department of Insurance, Division of Workers' Compensation (DWC) considers whether DWC should take disciplinary action against Basin.

Waiver

Basin acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Basin 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. Basin is a health care provider operating in the Texas workers' compensation system.
2. Basin was not selected to be tiered in the 2007, 2009, 2011, 2013, 2015, or 2017 Performance Based Oversight (PBO) assessments.

Improperly Pursuing a Private Claim against an Injured Employee

3. On [REDACTED], Basin provided medical services to an injured employee.
4. On [REDACTED], Basin sent a bill to the injured employee for the health care services provided on [REDACTED].
5. On [REDACTED], DWC faxed a letter to Basin informing it of the injured employee's status as a workers' compensation claimant and directing it to cease billing the injured employee.
6. 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.
7. Basin retained and utilized a third-party vendor, [REDACTED], for billing and collection services during the relevant time period involving the injured employee.

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: the history and extent of previous administrative violations; and the violator's demonstration of good faith, including actions it took to rectify the consequences of the prohibited act.
 5. Basin acknowledges it communicated with DWC about the relevant statutes and rules it 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. Basin 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, 414.003, 415.002, and 415.021.
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. Basin 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 § 415.003(6), a health care provider commits an administrative violation if the person fails to comply with a provision of this subtitle.
6. Pursuant to TEX. LAB. CODE § 413.042, a health care provider commits an administrative violation if it pursues a private claim against a workers' compensation claimant for all or part of the cost of a health care service it provides to the injured employee 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.
7. Basin violated TEX. LAB. CODE §§ 413.042 and 415.003(6) when it improperly billed an injured employee for workers' compensation health care services it provided.

Order

It is ordered that Basin Emergency Physicians, PLLC must pay an administrative penalty of \$2,500 within 30 days from the date of this order. Basin must pay the administrative penalty by 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 9999, P.O. Box 149104, Austin, Texas 78714-9104.



Cassie Brown
Commissioner of Workers' Compensation

Approved Form and Content:



Van B. Moreland
Staff Attorney, Enforcement
Compliance and Investigations
Division of Workers' Compensation

Confidential Information Redacted
Texas Labor Code §§402.083 and 402.092

Commissioner's Order
Basin Emergency Physicians, PLLC
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Affidavit

STATE OF Texas §

COUNTY OF Midland §

Before me, the undersigned authority, personally appeared Gregory Shipkey
who being by me duly sworn, deposed as follows:

"My name is Gregory Shipkey. I am of sound mind, capable of making this
statement, and have personal knowledge of these facts which are true and correct.

I hold the office of Managing Partner and am the authorized representative of
Basin Emergency Physicians, PLLC. I am duly authorized by the organization to execute
this statement.

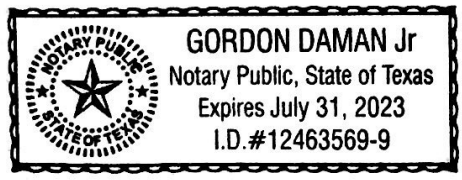
Basin Emergency Physicians, PLLC has knowingly and voluntarily entered into this consent
order and agrees with and consents to the issuance and service of this consent order."



Affiant

SWORN TO AND SUBSCRIBED before me on September 17, 2020.

(NOTARY SEAL)



Gordon Damann Jr
Signature of Notary Public

Gordon Damann Jr
Printed Name of Notary Public

07/31/2023
Commission Expiration

Confidential Information Redacted
Texas Labor Code §§402.083 and 402.092