

No. **2022-7464**

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

Date: 8/26/2022

Subject Considered:

Gerard Thomas Gabel, M.D.
6560 Fannin Street, Suite 1016
Houston, Texas 77030

Consent Order
DWC Enforcement File No. 24637

General remarks and official action taken:

This is a consent order with Gerard Thomas Gabel, 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. G6718, which was issued by the Texas Medical Board on August 26, 1984.
2. Respondent was a designated doctor (DD) in the Texas workers' compensation system. Respondent was certified as a DD from September 9, 2003, to April 17, 2022. Respondent was first certified to rate maximum medical improvement (MMI)

and assign impairment ratings (IRs) on September 2, 2003. Respondent's certification to rate MMI and assign IRs will expire on April 18, 2024.

3. Respondent was classified as "high" tier in the 2007 and 2009 Performance Based Oversight (PBO) assessments. Respondent was classified as "high" tier in the 2013, 2015, 2017, and 2019 PBO assessments in the DWC Form-073, *Work Status Report* Completeness measure and Off Work measure. Respondent was classified as "high" tier in the 2021 PBO assessment in the DWC Form-073, *Work Status Report* measure. Respondent was not selected to be tiered in the 2011 PBO assessment.

Medical Quality Review (MQR) No. 19-662 HCP

4. On [REDACTED] Respondent conducted a Certifying Doctor examination (CD examination) of an injured employee. The CD examination was requested by the injured employee's treating doctor to answer the questions of MMI and IR.
5. During the CD examination, Respondent did not perform a complete medical examination of the injured employee.
6. On [REDACTED] Respondent filed a DWC Form-069, *Report of Medical Evaluation* and a Narrative Report (collectively, CD Report), in which Respondent:
 - Failed to correlate Respondent's clinical findings with his selection of a [REDACTED] IR;
 - Failed to conduct a sufficient history and analysis of medical records pertaining to the injured employee;
 - Failed to include an adequate medical rationale for Respondent's determination of MMI; and
 - Failed to describe specific clinical findings and how they related to the injured employee's impairment and the criteria described in the applicable chapter of the American Medical Association Guides to the Evaluation of Permanent Impairment, 4th Edition (AMA Guides).
7. Respondent neither admits nor denies the allegations set forth in this consent order, but does not contest the entry of this order. This consent order and its requirements are entered into in the nature of compromise and as a settlement agreement.

Assessment of Sanction

1. Failure to perform an adequate medical evaluation hinders the injured employee's access to prompt, high-quality medical care and the employee's ability to return to employment as soon as it is considered safe and appropriate.
2. The examinations and reports from a CD have significant consequences on workers' compensation claims, the benefits of injured employees, and the Texas workers' compensation system. DWC relies on CDs to comply with the rules to provide a fair and accessible dispute resolution process.
3. 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.
4. 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 history and extent of previous administrative violations; the penalty necessary to

deter future violations and other matters that justice may require, including, but not limited to evidence of heightened awareness of the legal duty to comply with the Texas Workers' Compensation Act and DWC rules.

5. DWC found the following factor 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, but not limited to: PBO assessments.
6. 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).
7. 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 evaluations are, 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 § 130.1(b)(4), to certify MMI the certifying doctor must: review medical records; perform a complete medical examination of the injured employee for the explicit purpose of determining MMI (certifying examination); assign a specific date at which MMI was reached; and complete and submit required reports and documentation.
9. Pursuant to 28 Tex. Admin. Code § 130.1(c)(3), to assign IR, the certifying doctor must identify objective clinical or laboratory findings of permanent impairment for the current compensable injury; document specific laboratory or clinical findings of an impairment; analyze specific clinical and laboratory findings of an impairment; and compare the results of the analysis with the impairment criteria and provide the following: (i) a description and explanation of specific clinical findings related to each impairment, including zero percent (0%) impairment ratings; and (ii) a description of how the findings relate to and compare with the criteria described in the applicable chapter of the AMA Guides.
10. Pursuant to 28 Tex. Admin. Code §130.3, a doctor, other than a treating doctor, who is authorized to certify that an employee has reached MMI, must do so in accordance with § 130.1 of this title.
11. Respondent violated Tex. Lab. Code § 415.003(5) and (6) when he failed to meet the standard of care during a CD examination, and failed to file a CD report in the form and manner required by DWC.

Order

It is ordered that Gerard Thomas Gabel, M.D. must:

1. Pay an administrative penalty of \$6,000 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.
2. Attend and complete the Medical Record Keeping Seminar offered by the Center for Personalized Education for Professionals (CPEP) 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. Mail confirmation of course completion to the Texas Department of Insurance, Attn: DWC Enforcement Section, MC-CI, P.O. Box 12050, Austin, Texas 78711-2050.
3. Attend and complete an Ethics and Boundaries Assessment Services, L.L.C. 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. Mail confirmation to the Texas Department of Insurance, Attn: DWC Enforcement Section, MC-CI, P.O. Box 12050, Austin, Texas 78711-2050.
4. Attend and complete three hours of continuing medical education approved for Category I credits by the American Medical Association or the American Osteopathic Association, in the topic of medical practice in workers' compensation or occupational injuries within 90 days from the date of this Order. Respondent must request approval for each course from DWC prior to enrollment. To obtain approval for a course, Respondent must submit in writing to Enforcement information on the course, including a reasonably detailed description of the course content, including the course location and dates of instruction. Confirmation of the attendance and completion of a continuing medical education course must be provided to DWC within 14 days of completion. Mail confirmation to the Texas Department of Insurance, Attn: DWC Enforcement Section, MC-CI, P.O. Box 12050, Austin, Texas 78711-2050.



Jeff Nelson
Commissioner
TDI, Division of Workers' Compensation

Approved Form and Content:



Tyrus Housh
Staff Attorney, Enforcement
Compliance and Investigations
TDI, Division of Workers' Compensation

Commissioner's Order
Gerard Thomas Gabel, M.D.
DWC Enforcement File No. 24637
Page 8 of 8

Unsworn Declaration

STATE OF Tx §

COUNTY OF Harris §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is Gerard Gabel. I hold the position Self and am the authorized representative of Gerard Thomas Gabel, M.D. My business address is:

CSSO Farm Sub 1016 Harris Tx Harris Co
(Street) (City) (County) (State) (ZIP Code) 770

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.

[Signature]
Declarant

Executed on 8/15/22, 2022.