

No. **2023-8368**

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

Date: 11/30/2023

Subject Considered:

James William Butler, M.D.
9800 Richmond Avenue, Suite 200
Houston, Texas 77042-4521

Consent Order
DWC Enforcement File No. 32968

General remarks and official action taken:

This is a consent order with James William Butler, 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. On April 10, 1999, the Texas Medical Board issued physician license no. K7256 to Respondent.
2. Respondent is a designated doctor (DD) in the Texas workers' compensation system. Respondent was first certified as a DD on July 3, 2012. Respondent was first certified to rate maximum medical improvement (MMI), and assign impairment ratings (IRs) on July 3, 2012. Respondent's certification as a DD to rate MMI and assign IRs will expire on August 4, 2025.

3. Respondent was not selected to be tiered in any Performance Based Oversight (PBO) assessments.

Failure to Timely Produce a DD Report

4. On [REDACTED], Respondent performed a DD certifying examination to determine the issues of MMI and IR.
5. The Report of Medical Evaluation (DWC Form-69) and narrative report (combined, the "DD Report") were required to be filed with the injured employee, the injured employee's representative (if any), the insurance carrier, and DWC no later than seven working days after the exam, or by [REDACTED].
6. On [REDACTED], Respondent submitted the DD Report to DWC, which was 25 days late.

Assessment of Sanction

1. Failure to timely file required DD reports unnecessarily delays the resolution of medical disputes and the injured employee's ability to obtain income benefits in a timely and cost-effective manner. This is harmful to injured employees and the Texas workers' compensation system.
2. The examinations and DD reports have significant consequences on workers' compensation claims, the benefits of injured employees, and the Texas workers' compensation system. DWC relies on doctors 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; the history and extent of previous administrative violations; the penalty necessary to deter future violations; and whether the administrative violation had a negative impact on the delivery of benefits to an injured employee. Specifically, Respondent has received warning letters on the same violation in Enforcement cases 31010, 32249, and 32354.
 5. DWC is aware of no mitigating factors pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e).
 6. Pursuant to 28 Tex. Admin. Code § 180.26(c)(2), the commissioner may issue a public reprimand to a health care provider who commits an administrative violation as a matter of practice, meaning a repeated violation of the Act or a rule, order, or decision of the commissioner.
 7. 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).
 8. 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. 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 § 415.003(5), a health care provider commits an administrative violation each time the person fails to comply with a commissioner rule.
6. Pursuant to 28 Tex. Admin. Code §§ 127.210 and 180.26, the commissioner may revoke or suspend a DD's certification as a DD or sanction a DD for not complying with DWC rules.
7. Pursuant to 28 Tex. Admin. Code § 127.10(d), (e), and (f), a DD who determines MMI, IR, return-to-work, or other issues is required to file a DD report with DWC.
8. Pursuant to 28 Tex. Admin. Code §§ 130.1(d)(2)(A), and 130.3, a DD Report shall be filed with DWC, the injured employee, the injured employee's representative, and the insurance carrier no later than the seventh working day after the date of the certifying examination.
9. Respondent violated Tex. Lab. Code § 415.003(5) and 28 Tex. Admin. Code §§ 127.10, 130.1(d)(2)(A), and 130.3 by failing to timely file a DD report with DWC.

Order


1. This Consent Order shall constitute a public reprimand of James William Butler, M.D. for repeated violations of a division rule. James William Butler, M.D., is expected to comply with the law, as described above.
2. It is ordered that James William Butler, M.D., must pay an administrative penalty of \$500 within 30 days from the date the Commissioner signs the order; and

After receiving an invoice, James William Butler, M.D. 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, MC AO-9999, PO Box 12030, Austin, Texas, 78711-2030.



Jeff Nelson
Commissioner
TDI, Division of Workers' Compensation

Approved Form and Content:



Kathleen Kern
Staff Attorney, Enforcement
Compliance and Investigations
TDI, Division of Workers' Compensation

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Commissioner's Order
James William Butler, M.D.t
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Unsworn Declaration

STATE OF Indiana §
§
COUNTY OF Vanderburgh §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is: JAMES William Butler My license number is: (First) K 7256 (Last), which was issued by the TEXAS MEDICAL BOARD (Licensing agency/board/entity)

My business address is: 9800 Richmond, Ste 200, HOUSTON, TEXAS, TX, 77042
(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 11-28, 2023.

Confidential Information Redacted Texas
Labor Code §§402.083 and 402.092