

No. 2021-6706

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

**Date:** 03-05-2021

**Subject Considered:**

Jerry M. Keepers, M.D.  
308 West Parkwood Avenue, Suite 106  
Friendswood, Texas 77546

Consent Order  
DWC Enforcement File No. 22013

**General remarks and official action taken:**

This is a consent order with Jerry M. Keepers, M.D. (Dr. Keepers). The commissioner of the Texas Department of Insurance, Division of Workers' Compensation (DWC) considers whether DWC should take disciplinary action against Dr. Keepers.

**Waiver**

Dr. Keepers acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Dr. Keepers 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. Dr. Keepers holds Texas Medical License No. G1453, which was issued by the Texas Medical Board on February 20, 1982.
2. Dr. Keepers is a health care provider in the Texas workers' compensation system.
3. Dr. Keepers was not selected to be tiered in the 2007, 2009, 2011, 2013, 2015, 2017, or 2019 Performance Based Oversight (PBO) assessments.

### Medical Quality Review 19-7-HCP

4. DWC is authorized by TEX. LAB. CODE §§ 414.002 and 408.1225(b) to monitor treating doctors to determine compliance with the Texas Workers' Compensation Act and DWC rules the commissioner promulgates.
5. Pursuant to TEX. LAB. CODE §§ 413.0511 and 413.0512, DWC's medical advisor and Medical Quality Review Panel conducted an audit-based medical quality review of five cases. In these cases, Dr. Keepers referred injured employees for neuromuscular testing. The purpose of the audit was to evaluate the appropriateness of the health care provider's decision making and recordkeeping that supports referring injured employees for neuromuscular testing.

### *Making Unnecessary Referrals*

6. Dr. Keepers submitted unnecessary referrals to other health care providers or performed unnecessary testing of an injured employee as part of a medical examination in 100% of the reviewed cases (five out of five cases).
7. Specifically, Dr. Keepers ordered Manual Muscular Strength Tests or Range of Motion Tests that did not meet Official Disability Guidelines (ODG) recommendations and were not necessary for the care of the patient.

### *Failure to File Medical Records in the Form and Manner DWC Requires*

8. Dr. Keepers failed to document in the medical records the reasons why referral for additional neuromuscular testing was necessary to further treatment in 100% of the reviewed cases (five out of five cases).
9. Specifically, Dr. Keepers' medical recordkeeping was not adequate for the history, physical exam, and how the diagnostic testing would help decide a plan of care or treatment because Dr. Keepers did not document the patients' indication for testing or reasons for referring the patients for neuromuscular testing.

### *Submission of Inaccurate or Deficient Reports Due to Inappropriate or Unreasonable Evaluations*

10. Dr. Keepers submitted inaccurate or deficient medical records because he insufficiently documented the medical history or physical examination and analysis of medical records in 100% of the reviewed cases (five out of five cases).
11. Specifically, Dr. Keepers failed to provide documentation that the results were ever reviewed, and there is no documentation on use of the results.

#### *Failure to Apply DWC Treatment Guidelines*

12. Dr. Keepers failed to apply the ODG when he ordered Manual Muscular Strength Tests or Range of Motion Tests in 100% of the evaluated cases. (Five out of five cases).
13. Specifically, Dr. Keepers ordered Manual Muscular Strength Tests or Range of Motion Tests when the ODG do not provide any recommendations on separate Manual Muscular Strength Tests, strength testing, or Range of Motion Tests. This information is generally obtained while conducting a typical physical examination with an initial or recheck evaluation by the treating clinician. The results were not used by the attending physician or recommended by the ODG.

#### **Assessment of Sanction**

1. Failure to provide appropriate medical benefits in a timely and cost-effective manner by submitting unnecessary referrals to other health care providers and ordering unnecessary tests of an injured employee as part of a medical examination is harmful to injured employees and the Texas workers' compensation system.
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 violations, including the nature, circumstances, consequences, extent, and gravity of the prohibited act and the penalty necessary to deter future violations.
  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 penalty necessary to deter future violations.
  5. Dr. Keepers acknowledges he communicated with DWC about the relevant statutes and rules he 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. Dr. Keepers 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).
  7. Dr. Keepers neither admits nor denies the allegations and information in this consent order but does not contest the entry of this order. This consent order and its requirements are entered into in compromise and to avoid the costs of litigation and further expenditure of resources in this matter.

### **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, 413.0511, 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 and 402.00128(b)(7), and 28 TEX. ADMIN. CODE § 180.26(h).
3. Dr. Keepers has knowingly and voluntarily waived all procedural rights to which he 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 § 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(3), a health care provider commits an administrative violation if they make an unnecessary referral.
7. Pursuant to TEX. LAB. CODE § 415.003(4), a health care provider commits an administrative violation if they violate DWC's fee and treatment guidelines.
8. Pursuant to TEX. LAB. CODE § 415.003(5), a health care provider commits an administrative violation if they violate a DWC rule.
9. Pursuant to TEX. LAB. CODE § 415.003(6), a health care provider commits an administrative violation if they fail to comply with a provision of the Texas Workers' Compensation Act.
10. 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.

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11. 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 efficiently applying and managing health care.
12. Pursuant to 28 TEX. ADMIN. CODE § 137.100(a), health care providers must provide treatment in accordance with the recommendations in the current edition of the ODG.
13. Dr. Keepers violated TEX. LAB. CODE §§ 415.003(4), (5), and (6) and 28 TEX. ADMIN. CODE § 180.22(c)(2) each time he made unnecessary referrals for additional testing and treatment.

### Order

It is ordered that Jerry M. Keepers, M.D., must:


1. not participate in treating, examining, or consulting with other physicians regarding the treatment of injured employees who are covered under the Texas workers' compensation system;
2. not receive direct or indirect remuneration from the Texas workers' compensation system for any role related to the treatment of injured employees;
3. not accept any new injured employees within the Texas workers' compensation system as patients; and
4. transfer the care and treatment of any existing injured employee patients to other health care providers within 30 days from the date of this order.



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Cassie Brown  
Commissioner of Workers' Compensation

Approved Form and Content:



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Andrés Durá  
Staff Attorney, Enforcement  
Compliance and Investigations  
Division of Workers' Compensation

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**Affidavit**

STATE OF Texas

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COUNTY OF Harris

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Before me, the undersigned authority, personally appeared Jerry M. Keepers, M.D., who being by me duly sworn, deposed as follows:

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

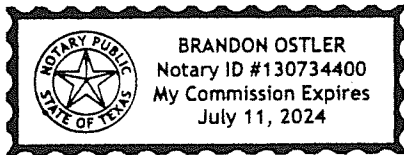
I waive rights provided by the Texas Labor Code and other applicable law and acknowledge the jurisdiction of the Texas commissioner of workers' compensation.

I knowingly and voluntarily enter into this consent order and agree with and consent to the issuance and service of this consent order."

Jerry M. Keepers, M.D.  
Affiant

SWORN TO AND SUBSCRIBED before me on February 9, 2021.

(NOTARY SEAL)



Brandon Ostler  
Signature of Notary Public

Brandon Ostler  
Printed Name of Notary Public

7-11-2024  
Commission Expiration