

No. 2024-8732

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

Date: 7/9/2024

Subject Considered:

John Obermiller, M.D.
PO Box 162370
Austin, Texas 78716

Consent Order
DWC Enforcement File No. 34616

General remarks and official action taken:

This is a consent order with John Obermiller, 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 is a health care provider (HCP) in the Texas workers' compensation system.
2. Respondent holds Texas Medical License No. G5442, which was issued by the Texas Medical Board (TMB) on August 27, 1983.
3. Respondent was not selected to be tiered in the last six years' Performance Based Oversight (PBO) assessments.

4. On [REDACTED], DWC issued a Commissioner's Order requiring the injured employee to attend a Required Medical Examination (RME) with Respondent to determine if certain medical conditions were caused by the compensable injury (extent of injury). The order did not authorize Respondent to certify Maximum Medical Improvement (MMI) or Impairment Rating (IR).
5. On [REDACTED], Respondent examined the injured employee and issued a report detailing his findings.

Improper Certification of MMI and IR Without Approval From DWC

6. On [REDACTED], Respondent completed a peer review titled a "Peer Review/Impairment Rating" of the medical documentation in the injured employee's claim.
7. Respondent improperly evaluated the issues of MMI and IR without DWC authorization by completing a DWC-069, Report of Medical Evaluation (DWC-069), and certifying that the injured employee reached MMI on [REDACTED], with a [REDACTED] % IR.
8. Prior to the peer review, Respondent had not been ordered or approved by DWC to evaluate MMI or IR for the injured employee.

Improper Certification of MMI and IR without a Medical Examination

9. Further, Respondent certified the MMI date and IR without performing a complete medical examination of the injured employee.

Improper Certification of a Prospective MMI Date

10. Because Respondent did not examine the injured employee for the [REDACTED] peer review, he backdated the date of exam and his date of certification to the date of his extent of injury exam on [REDACTED].
11. Assigning a prospective MMI date from the date of examination is prohibited by the Texas Labor Code and DWC rules.

Assessment Of Sanction

1. All healthcare providers operating in the Texas workers' compensation system are required to provide an objective and impartial evaluation of an injured employee's condition that conforms with the law. This ensures that disputes in the Texas workers' compensation system are minimized, benefits are appropriately paid, and injured employees are treated with dignity and respect.
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):
 - a. the seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the prohibited act;
 - b. the history and extent of previous administrative violations;
 - c. the violator's demonstration of good faith, including actions it took to rectify the consequences of the prohibited act;
 - d. the penalty necessary to deter future violations;
 - e. whether the administrative violation had a negative impact on the delivery of benefits to an injured employee;
 - f. the history of compliance with electronic data interchange (EDI) requirements;
 - g. to the extent reasonable, the economic benefit resulting from the prohibited act; and
 - h. other matters that justice may require, including, but not limited to:
 - i. PBO assessments;
 - ii. prompt and earnest actions to prevent future violations;
 - iii. self-report of the violation;
 - iv. the size of the company or practice;
 - v. the effect of a sanction on the availability of health care; and
 - vi. evidence of heightened awareness of the legal duty to comply with the Texas Workers' Compensation Act and DWC rules.
3. In assessing the sanction for this case, 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; and the penalty necessary to deter future violations.
4. DWC is aware of no mitigating factors pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e).

5. 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).

Conclusions of Law

1. The commissioner has jurisdiction over this matter pursuant to Tex. Lab. Code §§ 401.021; 402.001, 402.00114, 402.00116, 402.00128, 408.0231, 413.002, 413.0511, 413.0512, 414.002, 414.003, 415.021, and 415.0215.
2. The commissioner has the authority to dispose of this case informally pursuant to: Tex. Lab. Code §§ 401.021, 402.00128, 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 §§ 408.0231 and 415.0215; and 28 Tex. Admin. Code § 180.26, the commissioner may impose sanctions against a doctor who commits an administrative violation, including:
 - (1) reduction of allowable reimbursement;
 - (2) mandatory preauthorization of all or certain health care services;
 - (3) required peer review monitoring, reporting, and audit;
 - (4) deletion or suspension from the designated doctor list;
 - (5) restrictions on appointment under this Chapter 408 of the Texas Labor Code;
 - (6) conditions or restrictions on an insurance carrier regarding actions by insurance carriers under this subtitle in accordance with the memorandum of understanding adopted under Subsection (e); and
 - (7) mandatory participation in training classes or other courses as established or certified by the division.
5. Pursuant to Tex. Lab. Code § 415.021(a), a person commits an administrative violation if the person violates, fails to comply with, or refuses to comply with this

subtitle or a rule, order, or decision of the commissioner, including an emergency cease and desist order issued under Section 415.0211. In addition to any sanctions, administrative penalty, or other remedy authorized by this subtitle, the commissioner may assess an administrative penalty against a person who commits an administrative violation. The administrative penalty shall not exceed \$25,000 per day per occurrence. Each day of noncompliance constitutes a separate violation. The commissioner's authority under this chapter is in addition to any other authority to enforce a sanction, penalty, fine, forfeiture, denial, suspension, or revocation otherwise authorized by law.

6. Pursuant to Tex. Lab. Code § 415.003(5), a health care provider commits an administrative violation if he violates a commissioner rule.

Improper Certification of MMI and IR Without Approval From DWC

7. Pursuant to 28 Tex. Admin. Code § 130.1(a)(1)(A) and (a)(3), only an authorized doctor may certify MMI, determine whether there is permanent impairment, and assign an IR if there is permanent impairment. Doctors serving in the following roles may be authorized as provided in subsection (a)(1)(B) of this section: the treating doctor (TD), a designated doctor (DD), or a required medical exam (RME) doctor selected by the insurance carrier and approved by DWC to evaluate MMI or permanent whole-body impairment after a DD has performed the examination. A doctor who is authorized under this subsection to certify MMI, determine whether permanent impairment exists, and assign an IR and who does, must be referred to as the "certifying doctor."
8. Respondent violated Tex. Lab. Code §§ 415.021(a), 415.003(5), and 28 Tex. Admin. Code § 130.1(a)(1)(A) and (a)(3) by certifying MMI and IR in his peer review without being an authorized doctor with approval from DWC.

Improper Certification of MMI and IR without a Medical Examination

9. Pursuant to 28 Tex. Admin. Code § 130.1(b)(4) and (c)(3), to certify MMI, the certifying doctor must perform a complete medical examination of the injured employee for the explicit purpose of determining MMI and complete and submit required reports and documentation. This is called a certifying examination. Assignment of an IR for the current compensable injury must be based on the

injured employee's condition on the MMI date and consider the medical record and the certifying examination.

10. Respondent violated Tex. Lab. Code §§ 415.021(a), 415.003(5), and 28 Tex. Admin. Code § 130.1(b)(4)(B) and (c)(3) by certifying MMI and IR in a peer review report without performing a complete medical examination of the injured employee with the explicit purpose of determining MMI.

Improper Certification of a Prospective MMI Date


11. Pursuant to 28 Tex. Admin. Code § 130.1(b)(4)(C), to certify MMI, the certifying doctor must assign a specific date at which MMI was reached and the date of MMI may not be prospective from the date of examination.
12. Respondent violated Tex. Lab. Code §§ 415.021(a), 415.003(5), and 28 Tex. Admin. Code § 130.1(b)(4)(C) by certifying a prospective MMI date from his date of examination.

Commissioner's Order
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Order


It is ordered that John Obermiller, M.D. must pay an administrative penalty of \$500 within 30 days from the date the Commissioner signs the order.

After receiving an invoice, John Obermiller, M.D. must pay the administrative penalty by electronic transfer using the State Invoice Payment Service, 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:



Connor Ambrosini
Lead Attorney, Enforcement
Compliance and Investigations
TDI, Division of Workers' Compensation

Commissioner's Order
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Unsworn Declaration

STATE OF Texas §

COUNTY OF Travis §

Pursuant to the Tex. Civ. Prac. and Rem. Code §132.001(a), (b), and (d), my name is: JOHN PETER OSBERMILLER. My license number is:
(First) (Middle) (Last)

G-5442, which was issued by the TEXAS MEDICAL BOARD.
(Licensing agency/board/entity)

My business address is:
4201 BEE CREEK AUSTIN TRAVIS TX 78746.
(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.

John Obermiller MD
Declarant

Executed on JUNE 20, 2024.

Confidential Information Redacted Texas
Labor Code §§402.083 and 402.092