

No. 2024-8795

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

Date: 8/23/2024

Subject Considered:

Tom McMurray, M.D.
326 Laurel Ridge
San Antonio, Texas 78253

Consent Order
DWC Enforcement File No. 34128

General remarks and official action taken:

This is a consent order with Tom McMurray, 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 Dec. 6, 1989, the Texas Medical Board issued license no. H4543 to Respondent.
2. Respondent is a designated doctor (DD) in the Texas workers' compensation system. Respondent was first certified as a DD on Sept. 8, 2011. Respondent's certification as a DD will expire on Oct. 29, 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 was the DD who examined an injured employee to determine the issues of Maximum Medical Improvement (MMI), Impairment Rating (IR), and return to work (RTW).
5. The DD Report was due within seven working days of the examination, or by [REDACTED]
6. Respondent submitted the DD Report on [REDACTED], or 26 working days late.

Assessment of Sanction

1. Failure to timely file required reports related to a DD examination 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 reports from a DD have significant consequences on workers' compensation claims, the benefits of injured employees, and the Texas workers' compensation system. DWC relies on DDs 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 penalty necessary to deter future violations; and the history and extent of previous administrative violations. Specifically, DWC has issued five previous warning letters to Respondent since 2021 for substantially similar conduct.
 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. 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

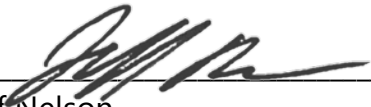
1. The commissioner has jurisdiction over this matter pursuant to Tex. Lab. Code §§ 401.021, 402.001, 402.00111, 402.00114, 402.00116, 402.00128, 408.0041, 408.1225, 413.002, 413.044, 413.0511, 413.0512, 414.002, 415.021, and 415.0215; 28 Tex. Admin. Code § 180.26; and Tex. Gov't Code §§ 2001.051-2001.178.
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. 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 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.
6. Pursuant to Tex. Lab. Code § 415.003(5) and 28 Tex. Admin. Code § 127.210(a)(15), the commissioner may sanction a DD for violating applicable statutes or rules while serving as a DD.
7. Pursuant to 28 Tex. Admin. Code § 127.10(e), a DD who determines the injured employee has reached MMI, who assigns an IR, or who determines the injured employee has not reached MMI, shall complete and file a report as required by 28 Tex. Admin. Code §§ 130.1 and 130.3.
8. Pursuant to 28 Tex. Admin. Code § 127.10(f), a DD who examines an injured employee pursuant to any question relating to return to work is required to file a narrative report that complies with the requirements of §127.220(a) of this title within seven working days of the date of the examination.
9. 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.
10. Respondent violated Tex. Lab. Code § 415.003(5); and 28 Tex. Admin. Code §§ 127.10 by failing to timely file a DD report with DWC.

Order


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

After receiving an invoice, Tom McMurray, 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:



Daniel Garcia
Staff Attorney, Enforcement
Compliance and Investigations
TDI, Division of Workers' Compensation

Unsworn Declaration

STATE OF Texas

§

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COUNTY OF Bexar County

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Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is:

Thomas Jay McMurray. My license number
(First) (Middle) (Last)
is H4543, which was issued by the Texas Medical Board
(Licensing agency/board/entity)

My business address is:

326 Laurel Ridge, San Antonio, Bexar TX 78253
(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.

Tom McMurray

Declarant

Executed on July 19, 2024.