

No. 2019 6001

OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF WORKERS' COMPENSATION

Date: JUL 02 2019

Subject Considered:

HECTOR GONZALEZ, DO
1450 Empire Central Drive, Suite 100
Dallas, Texas 75247-4081

CONSENT ORDER
TDI-DWC ENFORCEMENT FILE NO. 17420

General remarks and official action taken:

The commissioner of workers' compensation (commissioner) considers whether disciplinary action should be taken against Hector Gonzalez, DO (Dr. Gonzalez).

WAIVER

Dr. Gonzalez acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Dr. Gonzalez waives all of these rights and any other applicable procedural rights in consideration of the entry of this consent order.

FINDINGS OF FACT

The commissioner makes the following findings of fact:

1. Dr. Gonzalez was granted a license by the Texas Medical Board on December 7, 2001. Dr. Gonzalez holds Texas Medical Board License Number L2904.
2. Dr. Gonzalez was classified as "poor" tier for the 2013 MRI Performance Based Oversight (PBO) assessment. Dr. Gonzalez was classified as "poor" tier for the 2015 DWC Form 73, Work Status Report completeness and documentation measure. Dr. Gonzalez was classified as "high" tier for the 2015 MRI PBO assessment. Dr. Gonzalez was not selected to be tiered in the 2007, 2009, 2011, or 2017 PBO assessments.

MEDICAL QUALITY REVIEW NO. 18-35-HCP

3. The Texas Department of Insurance, Division of Workers' Compensation (DWC), as authorized by TEX. LAB. CODE §§ 414.002 and 408.1225(b), monitors system participants to determine compliance with the Texas Workers' Compensation Act and rules promulgated by the commissioner.
4. Pursuant to the requirements of TEX. LAB. CODE §§ 413.0511 and 413.0512, DWC's Medical Advisor and Medical Quality Review Panel conducted an audit-based medical quality review (MQR No. 18-35 HCP) of 10 cases in which Dr. Gonzalez ordered an MRI

of the lumbar spine. The purpose of the audit was to evaluate the application of the *Official Disability Guidelines-Treatment in Workers' Comp* (ODG guidelines) by Dr. Gonzalez to determine the medical necessity and appropriateness of ordering an MRI before at least one month of conservative therapy.

UNREASONABLE OR UNNECESSARY REFERRAL FOR SERVICES

5. Dr. Gonzalez ordered an MRI of the lumbar spine that was not reasonable or necessary in 100% of cases evaluated (10 out of 10).
6. Dr. Gonzalez failed to document the rationale or justification for ordering an MRI of the lumbar spine before at least one month of conservative therapy in 40% of the cases evaluated (four out of 10).

FAILURE TO APPLY DWC TREATMENT GUIDELINES

7. Dr. Gonzalez failed to apply the ODG guidelines when he ordered an MRI of the lumbar spine in 100% of cases evaluated (10 out of 10).
8. Specifically, Dr. Gonzalez ordered an MRI of the lumbar spine without first providing at least one month of conservative therapy to the injured employee, as recommended in the ODG guidelines; and Dr. Gonzalez did not provide a basis for a reasonable deviation or exception to the ODG guidelines when ordering an MRI of the lumbar spine in 100% of cases evaluated (10 out of 10).

TREATMENTS AND EVALUATIONS WERE SUBSTANTIALLY DIFFERENT FROM WHAT THE COMMISSIONER FINDS TO BE FAIR AND REASONABLE

9. Dr. Gonzalez's treatments and evaluations were substantially different from what the commissioner finds to be fair and reasonable in 100% of cases examined (10 out of 10).
10. Specifically, in six of the 10 cases reviewed, Dr. Gonzalez provided unreasonable rationale or justification for ordering an MRI of the lumbar spine before at least one month of conservative therapy in 60% of cases examined (six out of 10).

ASSESSMENT OF SANCTION

11. Ordering or performing tests of an injured employee without applying the ODG guidelines imposes unnecessary testing and extraneous medical costs on the Texas workers' compensation system.
12. In assessing the sanction for this case, DWC appropriately and fully considered the following factors set forth 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 demonstrated good faith of the violator, including actions taken to rectify the consequences of the prohibited act;
 - the penalty necessary to deter future violations;
 - whether the administrative violation has negative impact on the delivery of benefits to an injured employee;
 - the history of compliance with electronic data interchange requirements;
 - other matters that justice may require, including but not limited to:
 - PBO assessments;
 - the promptness and earnestness of 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; and
 - to the extent reasonable, the economic benefit resulting from the prohibited act.
13. In assessing the sanction for this case, DWC found the following factors set forth 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.
14. In assessing the sanction for this case, DWC found the following factors set forth 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: the history and extent of previous administrative violations (no history); PBO assessments (high tier in 2015 for MRI PBO assessment); the promptness and earnestness of actions to prevent future violations; evidence of heightened awareness of the legal duty to comply with the Texas Workers' Compensation Act and DWC rules; and to the extent reasonable, the economic benefit resulting from the prohibited act.
15. Dr. Gonzalez acknowledges that he has communicated with DWC regarding the relevant statutes and rules violated; the facts establishing that the administrative violation occurred; and the appropriateness of the proposed sanction, including how DWC considered the factors under TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e).
16. Dr. Gonzalez acknowledges that, in assessing the sanction, DWC considered the factors set forth in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e).

CONCLUSIONS OF LAW

The commissioner makes the following conclusions of law:

1. The commissioner has jurisdiction over this matter pursuant to TEX. LAB. CODE §§ 402.001, 402.00111, 402.00114, 402.00116, 402.00128, 413.002, 413.0511, 413.0512, and 414.002.
2. The commissioner has authority to informally dispose of this matter as set forth herein under TEX. GOV'T CODE § 2001.056; TEX. LAB. CODE §§ 401.021, 402.00128(b)(7), and 415.034; and 28 TEX. ADMIN. CODE § 180.26(h).
3. Pursuant to TEX. LAB. CODE § 415.021, in addition to any sanction, administrative penalty, or other remedy authorized by this subtitle, the commissioner may assess an administrative penalty against a person who commits an administrative violation.
4. 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.
5. 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 substantially different from those the commissioner finds to be fair and reasonable.
6. Pursuant to TEX. LAB. CODE § 415.003(3), a health care provider commits an administrative violation if the person makes an unnecessary referral.
7. Dr. Gonzalez violated TEX. LAB. CODE §§ 408.0231(c)(3) and 415.003(3) each time he ordered an MRI of the lumbar spine that was not reasonable or necessary.
8. Pursuant to TEX. LAB. CODE § 415.003(4), a health care provider commits an administrative violation if the person violates DWC's fee and treatment guidelines.
9. Pursuant to TEX. LAB. CODE § 415.003(5), a health care provider commits an administrative violation if the person violates a commissioner rule.
10. Pursuant to 28 TEX. ADMIN. CODE § 137.100(a), health care providers shall provide treatment in accordance with the current edition of the ODG guidelines.
11. Dr. Gonzalez violated TEX. LAB. CODE §§ 415.003(4) and (5) and 28 TEX. ADMIN. CODE § 137.100(a) when he failed to apply the ODG guidelines and when he failed to provide a basis for a reasonable deviation or exception to the ODG guidelines when ordering an MRI of the lumbar spine before at least one month of conservative therapy.

12. Pursuant to TEX. LAB. CODE § 415.003(6), a health care provider commits an administrative violation if the person fails to comply with a provision of the Texas Workers' Compensation Act.
13. Pursuant to TEX. LAB. CODE §§ 408.023(1) and 408.025(c) and 28 TEX. ADMIN. CODE § 180.22(c)(2), the treating doctor is responsible for the efficient utilization and management of health care.
14. Dr. Gonzalez violated TEX. LAB. CODE §§ 408.0231(c)(3), 415.003(5) and (6) each time he unreasonably ordered an MRI of the lumbar spine before at least one month of conservative therapy without documenting the rationale or justification for doing so.

ORDER

Hector Gonzalez, DO is ORDERED:

1. To pay an administrative penalty of \$2,500 within 30 days from the date of this Order;
2. To purchase and maintain a current subscription to the *Official Disability Guidelines—Treatment in Workers' Comp*, published by Work Loss Data Institute, for one year following the date of this Order. Confirmation of the purchase of the first year of subscription must be provided to DWC within 14 days of the date of this Order; and
3. To attend and complete a KSTAR Medical Record Keeping 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.

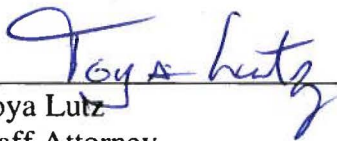
The administrative penalty must be paid by company check, cashier's check, or money order made payable to the "State of Texas." Hector Gonzalez, DO must mail the administrative penalty to the Texas Department of Insurance, Attn: DWC Enforcement, MC 9999, P.O. Box 149104, Austin, Texas, 78714-9104.

Hector Gonzalez, DO must mail certificates of completion to the Texas Department of Insurance, Attn: Mary Hughes, DWC Enforcement, 7551 Metro Center Drive, Suite #100, MS-11, Austin, Texas 78744.



Cassie Brown *NCTW*
Commissioner of Workers' Compensation

Approved as to Form and Content:



Toya Lutz
Staff Attorney
DWC Enforcement
Compliance and Investigations
Texas Department of Insurance

