

No. 2020-6357

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

Date: 06-03-2020

Subject Considered:

US Anesthesia Partners of Texas
P.O. Box 660267
Dallas, Texas 75266-0267

Consent Order
DWC Enforcement File No. 19255

General remarks and official action taken:

This is a consent order with US Anesthesia Partners of Texas (US Anesthesia). The commissioner of the Texas Department of Insurance, Division of Workers' Compensation (DWC) considers whether DWC should take disciplinary action against US Anesthesia.

Waiver

US Anesthesia acknowledges that the Texas Labor Code and other applicable laws provide certain rights. US Anesthesia 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. US Anesthesia is a health care provider operating in the Texas workers' compensation system.
2. US Anesthesia was not selected to be tiered in the 2007, 2009, 2011, 2013, 2015, 2017, or 2019 Performance Based Oversight (PBO) assessments.

Improperly Pursuing a Private Claim against an Injured Employee

3. On [REDACTED], US Anesthesia provided medical services to an injured employee.
4. On [REDACTED], US Anesthesia submitted a bill to the workers' compensation carrier to pay for the medical services provided to the injured employee. The workers' compensation carrier sent an explanation of benefits (EOB) to US Anesthesia on [REDACTED]. In the EOB, the carrier denied payment for the bill because the time limit to request payment had expired.
5. On [REDACTED], US Anesthesia billed the injured employee for the medical services it provided to them on [REDACTED].
6. US Anesthesia knew of the injured employee's status as a workers' compensation claimant because the EOB it received stated it was for medical services related to a workers' compensation claim.
7. There is no finding that the injured employee violated TEX. LAB. CODE § 408.022 in selecting a treating doctor and no final adjudication that the claim was not compensable.

Assessment of Sanction

1. Improperly billing an injured employee for health care services imposes an undue financial burden on the injured employee and circumvents the Texas workers' compensation system and the roles of its system participants.
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 violation; the history and extent of previous administrative violations; the penalty necessary to deter future violations; and other matters that justice may require, including 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 mitigating: the violator's demonstration of good faith, including actions it took to rectify the consequences of the prohibited act, and the penalty necessary to deter future violations.
5. US Anesthesia acknowledges it communicated with DWC about the relevant statutes and rules it 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. US Anesthesia 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 §§ 402.001, 402.00114, 402.00116, 402.00128, 414.002, 414.003, 415.002, and 415.021.

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. US Anesthesia 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(6), a health care provider commits an administrative violation if it fails to comply with a provision of this subtitle.
6. Pursuant to TEX. LAB. CODE § 413.042, a health care provider commits an administrative violation if it pursues a private claim against a workers' compensation claimant for all or part of the cost of a health care service it provides to the injured employee unless the injury is finally adjudicated as not compensable, or the injured employee violates TEX. LAB. CODE § 408.022, relating to the selection of a doctor.
7. US Anesthesia violated TEX. LAB. CODE §§ 413.042 and 415.003(6) when it improperly billed an injured employee for workers' compensation health care services it provided.

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Order

It is ordered that US Anesthesia Partners of Texas must pay an administrative penalty of \$3,000 within 30 days from the date of this order. US Anesthesia Partners of Texas must pay the administrative penalty by 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 Section, MC 9999, P.O. Box 149104, Austin, Texas 78714-9104.



Cassie Brown
Commissioner of Workers' Compensation

Approved Form and Content:



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