

OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF WORKERS' COMPENSATION

Date: JAN 31 2020

Subject Considered:

EDWARD NASH, M.D.
17270 Red Oak Drive, Suite 200
Houston, Texas 77090-2632

CONSENT ORDER
TDI-DWC ENFORCEMENT FILE NO. 22015

General remarks and official action taken:

The commissioner of workers' compensation (commissioner) considers whether disciplinary action should be taken against Edward Nash, M.D. (Dr. Nash).

WAIVER

Dr. Nash acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Dr. Nash 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. Nash was granted a license by the Texas Medical Board on June 2, 2006. Dr. Nash holds Texas Medical License Number M3662.
2. Dr. Nash was not classified in the 2007, 2009, 2011, 2013, 2015, or 2017 Performance Based Oversight (PBO) assessments.

MEDICAL QUALITY REVIEW NO. 19-9 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. 19-9 HCP) of five cases in which Dr. Nash referred an injured employee for neuromuscular testing. The purpose of MQR No. 19-9 was to evaluate the application of the *Official Disability Guidelines – Treatment in Workers' Comp* (ODG guidelines) by Dr. Nash to determine the medical necessity and appropriateness of referring an injured employee for neuromuscular testing. One of the cases failed to meet selection

criteria and was dropped from the audit sample. The remaining four cases were reviewed to determine Dr. Nash's compliance.

UNREASONABLE OR UNNECESSARY REFERRALS FOR SERVICES

5. Dr. Nash referred an injured employee for neuromuscular testing that was not reasonable or necessary in 100% of cases evaluated (4 out of 4).
6. Additionally, Dr. Nash failed to document the rationale or justification for referring injured employees for neuromuscular testing.

FAILURE TO APPLY DWC TREATMENT GUIDELINES

7. Dr. Nash failed to apply the ODG guidelines when he referred an injured employee for neuromuscular testing in 100% of cases evaluated (4 out of 4).
8. Specifically, Dr. Nash referred injured employees for neuromuscular testing, which was not recommended by the ODG guidelines; and Dr. Nash did not provide a basis for a reasonable deviation or exception to the ODG guidelines when referring injured employees for neuromuscular testing.

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

9. Dr. Nash's treatment and evaluations were substantially different from what the commissioner finds to be fair and reasonable in 100% of cases examined (4 out of 4).
10. Specifically, Dr. Nash failed to document the rationale or justification for referring injured employees for neuromuscular testing.

ASSESSMENT OF SANCTION

11. Ordering or performing testing of an injured employee without applying the ODG guidelines imposes unnecessary testing and extraneous medical costs on the 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; and the penalty necessary to deter future violations.
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: the demonstrated good faith of the violator, including actions taken to rectify the consequences of the prohibited act; whether the administrative violation has negative impact on the delivery of benefits to an injured employee; and other matters that justice may require, including the promptness and earnestness of actions to prevent future violations.
15. Dr. Nash acknowledges that DWC and Dr. Nash have communicated 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. Nash 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:

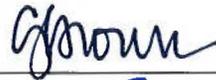
1. The commissioner has jurisdiction over this matter pursuant to TEX. LAB. CODE §§ 402.001, 402.00111, 402.00114, 402.00116, 402.00128, 413.002, 413.0511, 413.0512, 414.002, 415.021, and 415.0215; 28 TEX. ADMIN. CODE § 180.26; and TEX. GOV'T CODE §§ 2001.051 – 2001.178.
2. The commissioner has authority 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)(4), the commissioner may impose sanctions against a doctor who commits an administrative violation, including deletion or suspension from the approved doctor list and the designated doctor list.
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. Nash violated TEX. LAB. CODE §§ 408.0231(c)(3) and 415.003(3) each time he referred an injured employee for neuromuscular testing 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. Nash violated TEX. LAB. CODE § 415.003(4) and (5) each time he failed to apply the ODG guidelines and failed to provide a basis for a reasonable deviation or exception to the ODG guidelines when referring an injured employee for neuromuscular testing.
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(l) 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. Nash violated TEX. LAB. CODE §§ 408.0231(c)(3), 415.003(5), and 415.003(6) each time he unreasonably referred an injured employee for neuromuscular testing without documenting the rationale or justification for doing so.

ORDER

It is ORDERED that Edward Nash, M.D. shall not participate or apply for certification, in or out of state, as a designated doctor in the Texas workers' compensation system for two years from the date of this Order.

It is further ORDERED that Edward Nash, M.D. is hereby removed from the Texas workers' compensation system as a health care provider; shall no longer participate as a health care provider in the treatment or examination – including certification of maximum medical improvement, impairment rating, or return to work – of any injured employee in the Texas workers' compensation system, in or out of network; and shall not receive as a health care provider direct or indirect remuneration, in any form, from the treatment or examination of any injured employee in the Texas workers' compensation system. This Order does not apply to emergency cases as defined by 28 TEX. ADMIN. CODE § 133.2. Dr. Nash's removal from the Texas workers' compensation system as a health care provider shall last for two years from the date of this Order.



Cassie Brown *NCR*
Commissioner of Workers' Compensation

Approved as to Form and Content:



Glen Imes
Staff Attorney, DWC Enforcement
Texas Department of Insurance

