

No. **2021-7055**

Confidential Information Redacted
Texas Labor Code §§402.083 and 402.092

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

Date: 11/4/2021

Subject Considered:

Ensemble Health Partners o/b/o
UT Health North Campus Tyler
11511 Reed Hartman Highway
Cincinnati, Ohio 45241-2421

Consent Order
DWC Enforcement File No. 28009

General remarks and official action taken:

This is a consent order with UT Health North Campus Tyler (UT Health). The commissioner of the Texas Department of Insurance, Division of Workers' Compensation (DWC) considers whether DWC should take disciplinary action against UT Health.

Waiver

UT Health acknowledges that the Texas Labor Code and other applicable laws provide certain rights. UT Health 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. UT Health is a health care provider operating in the Texas workers' compensation system.
2. UT Health 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] DWC received a complaint from an injured employee. The injured employee received improper billing from UT Health for a medical service covered by workers' compensation insurance. The initial bill was dated [REDACTED] for the date of service [REDACTED]
4. A subsequent investigation by DWC confirmed via written correspondence from UT Health's third-party billing agent, Ensemble Health Partners (Ensemble HP), that billing would cease for the injured employee for the date of service.
5. On [REDACTED] DWC issued a warning letter (Enforcement Case #26703) to UT Health for improperly billing an individual covered by workers' compensation insurance after receiving notice from the insurance carrier's EOB denial that workers' compensation insurance was involved in the claim.
6. On [REDACTED] the injured employee was billed again for the date of service covered by workers' compensation insurance. The primary insurance listed on this bill was listed as "Do Not Use----Enable Comp WC" indicating knowledge that workers' compensation insurance was involved in this case.
7. On [REDACTED] DWC contacted Ensemble HP on behalf of UT Health and received a second confirmation in writing that the injured employee would no longer be billed.
8. On [REDACTED] the injured employee was billed again for the date of service covered by workers' compensation insurance.
9. From [REDACTED] to [REDACTED], DWC attempted to contact Ensemble HP and UT Health but did not receive any response. On [REDACTED] a billing manager from Ensemble HP provided the third confirmation in writing that the injured employee would no longer be billed for the date of service.
10. On [REDACTED] the injured employee received a collections call from UT Health for the date of service covered by workers' compensation insurance. On the same day, the injured employee notified DWC.

11. On [REDACTED] the injured employee was billed again for the date of service covered by workers' compensation insurance.
12. On [REDACTED], DWC corresponded with Ensemble HP and UT Health. A fourth confirmation was provided in writing that the bill would not be sent to collections, the balance on the account was [REDACTED] the injured employees' credit will not be affected, and that billing the injured employee would cease.
13. There is no finding determining 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: promptness and earnestness in responding to DWC; UT Health has confirmed in writing that the balance on the account is \$0, the injured employee will no longer be billed, and the bill was not sent to collections; UT Health has developed and submitted to DWC an action plan for proper handling and review of workers' compensation billing claims; and UT Health is a State of Texas government entity.
 5. UT Health 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. UT Health 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)(6)-(7), and 28 TEX. ADMIN. CODE § 180.26(h) and (i).

3. UT Health 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 the Texas Workers' Compensation Act.
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 provided 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. UT Health violated TEX. LAB. CODE §§ 413.042 and 415.003(6) each time it improperly billed an injured employee for workers' compensation health care services it provided.

Order

It is ordered that UT Health North Campus Tyler must pay an administrative penalty of \$2,500 within 30 days from the date of this order. UT Health North Campus Tyler must pay the administrative penalty by 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 Section, MC AO-9999, P.O. Box 12030, Austin, Texas 78711-2030.



Dan Paschal, J.D.
Deputy Commissioner
Policy & Customer Services
TDI, Division of Workers' Compensation

Approved Form and Content:



Mackenzie Arthur
Staff Attorney, Enforcement
Compliance and Investigations
TDI, Division of Workers' Compensation

Unsworn Declaration

STATE OF Texas §
§
COUNTY OF Smith §

Pursuant to the TEX. CIV. PRAC. REM. § 132.001(a), (b), and (d), my name is Kris I. Kavasch. I hold the position of SVP, Finance, CFO and am the authorized representative of UT Health North Campus Tyler. My business address is:

11937 U.S. Highway 271, Tyler, Smith, TX, 75708.

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.



Declarant

Executed on August 23, 2021.