

**2019**      **6056**  
No. \_\_\_\_\_

**OFFICIAL ORDER**  
*of the*  
**TEXAS COMMISSIONER OF WORKERS' COMPENSATION**

Date: **AUG 22 2019**

**Subject Considered:**

**RADIOLOGY ASSOCIATES OF NORTH TEXAS**  
P.O. Box 1723  
Indianapolis, Indiana 46206-1723

**CONSENT ORDER**  
TDI-DWC ENFORCEMENT FILE NO. 19230 and 19231

**General remarks and official action taken:**

The commissioner of workers' compensation (commissioner) considers whether disciplinary action should be taken against Radiology Associates of North Texas (Radiology Associates).

**WAIVER**

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

**IMPROPERLY PURSUING A PRIVATE CLAIM AGAINST  
AN INJURED EMPLOYEE**

3. In TDI-DWC Enforcement File No. 19230, Radiology Associates provided services to the injured employee on [REDACTED], in connection with a workers' compensation injury.
4. Radiology Associates sent a bill on or about [REDACTED], in the amount of \$ [REDACTED] to the injured employee for health care services it provided to the injured employee on [REDACTED].

5. On [REDACTED], the injured employee provided Radiology Associates with [REDACTED] worker's compensation insurance information. Radiology Associates acknowledged receipt of the information on [REDACTED].
6. Radiology Associates sent a bill on [REDACTED], in the amount of \$ [REDACTED] to the injured employee for health care services it provided to the injured employee on [REDACTED].
7. In TDI-DWC Enforcement File No 19231, Radiology Associates provided services to the injured employee on [REDACTED], in connection with a workers' compensation injury.
8. The injured employee's insurance carrier, [REDACTED], contacted Radiology Associates on [REDACTED], informing Radiology Associates that the bill sent to the injured employee was for services related to a workers' compensation claim and that it should immediately cease billing the injured employee and instead bill the insurance carrier.
9. Radiology Associates sent a bill on [REDACTED], in the amount of \$ [REDACTED] to the injured employee for health care services it provided to the injured employee on [REDACTED].
10. In either case, no finding had been made determining that either injured employee violated TEX. LAB. CODE § 408.022 in selecting a treating doctor, nor had there been a final adjudication that the claims are not compensable.

#### ASSESSMENT OF SANCTION

11. 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.
12. In assessing the sanction for this case, the commissioner 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 Texas Department of Insurance, Division of Workers' Compensation (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; the penalty necessary to deter future violations; and other matters that justice may require, including but not limited to the promptness and earnestness of actions to prevent 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: including the demonstrated good faith of the violator, including actions taken to rectify the consequences of the prohibited act, as the company has initiated and continues to emphasize training highlighting policies and procedures to prevent such actions from occurring again; whether the administrative violation has negative impact on the delivery of benefits to an injured employee, as one employee did not pay any amount out of pocket and the other paid a total of \$35, which has since been refunded; and the employee in question, who pursued the billing of the injured employees, is no longer with the company.
15. Radiology Associates acknowledges that it 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. Radiology Associates 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, 414.002, 414.003, 415.002, and 415.021.
2. The commissioner has authority to informally dispose of this matter as set forth under TEX. GOV'T CODE § 2001.056, TEX. LAB. CODE § 402.00128(b)(7), and 28 TEX. ADMIN. CODE § 180.26(h).
3. Pursuant to TEX. LAB. CODE § 415.021, the commissioner may assess an administrative penalty against a person who commits an administrative violation.

4. 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.
5. 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 provided to the injured employee by the provider unless the injury is finally adjudicated as not compensable or the employee violates TEX. LAB. CODE § 408.022 relating to the selection of a doctor.
6. Radiology Associates violated TEX. LAB. CODE §§ 413.042 and 415.003(6), when it improperly billed an injured employee for workers' compensation health care services provided.

**ORDER**

Radiology Associates of North Texas is ORDERED to pay an administrative penalty of \$4,500 within 30 days from the date of this Order.

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

  
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Cassie Brown *NET*  
Commissioner of Workers' Compensation

Approved as to Form and Content:

  
\_\_\_\_\_  
Amy Norman  
Staff Attorney, DWC Enforcement  
Texas Department of Insurance

