

2019 6128  
No. \_\_\_\_\_

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

Date: NOV 05 2019

**Subject Considered:**

**JOHN A. THOMAS, M.D.**  
929 Lipscomb Street  
Fort Worth, Texas 76104

**CONSENT ORDER**  
TDI-DWC ENFORCEMENT FILE NO. 12449

**General remarks and official action taken:**

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

**WAIVER**

Dr. Thomas acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Dr. Thomas 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. Thomas was granted a license by the Texas Medical Board on February 6, 2004. Dr. Thomas holds Texas Medical License number L8215.
2. Dr. Thomas was classified as "average" tier in the completeness of the DWC Form-73, Work Status Report measure; and as "poor" tier in the documentation of the DWC Form-73, Work Status Report measure, of the 2015 Performance Based Oversight (PBO) Assessment. Dr. Thomas was not classified in the 2007, 2009, 2011, 2013, or 2017 PBO assessments.

**MEDICAL QUALITY REVIEW NUMBER 16-60 RTW**

3. The Texas Department of Insurance, Division of Workers' Compensation (DWC), as authorized by TEX. LAB. CODE § 414.002, monitors system participants to determine compliance with the Texas Workers' Compensation Act and rules promulgated by the commissioner.
4. DWC's Medical Advisor, whose duties are defined in TEX. LAB. CODE § 413.0511, and the Medical Quality Review Panel (MQRP), as established pursuant to TEX. LAB. CODE § 413.0512,

conducted a medical quality review of seven cases where Dr. Thomas treated injured employees. Three of the seven cases were referred to enforcement and are the subject of this Consent Order.

5. In three cases, Dr. Thomas failed to complete a DWC Form-73, Work Status Report (DWC Form-73) in the form and manner prescribed by DWC.
6. In three cases, Dr. Thomas did not document or reference use or consideration of the *Medical Disability Advisor, Workplace Guidelines for Disability Duration* (MD Guidelines).
7. In three cases, Dr. Thomas failed to provide an adequate description or explanation of how the injury prevented the injured employee from returning to work in any capacity.

### ASSESSMENT OF SANCTION

8. Accurate and thorough documentation of medical information regarding injured employees is imperative to DWC's goal of ensuring that each injured employee receives treatment intended to facilitate the injured employee's return to employment as soon as it is considered safe and appropriate by the injured employee's health care provider.
9. DWC relies on medical information submitted by health care providers for a variety of purposes, including, but not limited to, providing required information and reports to the legislature; ensuring that health care providers comply with the Texas Labor Code and DWC rules; and detecting patterns and practices in actions taken on claims.
10. 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.

11. 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; PBO assessment classifications; the history and extent of previous administrative violations; and whether the administrative violation had a negative impact on the delivery of benefits to an injured employee.
12. 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 promptness and earnestness of actions to prevent future violations.
13. Dr. Thomas acknowledges that he and DWC 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).
14. Dr. Thomas 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, 408.023, 408.0231, 408.025, 413.002, 413.0511, 413.041, 413.0512, 415.003, 415.021, and 415.0215; and 28 TEX. ADMIN. CODE §§ 129.5, 137.10, 180.22, and 180.26.
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 and 402.00128(b)(7), and 28 TEX. ADMIN. CODE § 180.26(h).
3. Pursuant to TEX. LAB. CODE § 415.0215 and 28 TEX. ADMIN. CODE § 180.26, the commissioner may impose sanctions against a doctor who commits an administrative violation, including mandatory participation in training classes.
4. 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.
5. Pursuant to TEX. LAB. CODE § 415.003(5) and (6), a health care provider commits an administrative violation if the person violates a commissioner rule or fails to comply with a provision of the Texas Workers' Compensation Act.
6. Pursuant to 28 TEX. ADMIN. CODE § 129.5(b), a doctor shall file a Work Status Report in the form and manner prescribed by DWC.

7. Dr. Thomas violated TEX. LAB. CODE § 415.003(5) each time he failed to file a DWC Form-73 in the form and manner prescribed by DWC.
8. Pursuant to 28 TEX. ADMIN. CODE § 137.10(a), insurance carriers, health care providers, and employers shall use the disability duration values in the current edition of the MD Guidelines as guidelines for the evaluation of expected or average return to work time frames.
9. Pursuant to 28 TEX. ADMIN. CODE § 137.10(c)(1), the MD Guidelines provide disability duration expectancies. The MD Guidelines shall be presumed to be a reasonable length of disability duration and shall be used by: (1) health care providers to establish return to work goals or a return to work plan for safely returning injured employees to medically appropriate work environments.
10. Dr. Thomas violated TEX. LAB. CODE § 415.003(5) each time he failed to consider the MD Guidelines when assessing return to work.
11. Pursuant to 28 TEX. ADMIN. CODE § 129.5(c)(4), a doctor shall be considered to have filed a complete Work Status Report if the report is filed in the form and manner prescribed by DWC, signed, and contains at a minimum an explanation of how the employee's workers' compensation injury prevents the employee from returning to work.
12. Dr. Thomas violated TEX. LAB. CODE § 415.003(5) each time he failed to sufficiently provide an adequate description or explanation in the DWC Form-73 of how the injury prevented the injured employee from returning to work in any capacity.

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ORDER

John A. Thomas, M.D. is ORDERED to:

1. pay an administrative penalty of \$1,500 within 30 days from the date of this Order;
2. purchase and maintain a current subscription to the *Medical Disability Advisor, Workplace Guidelines for Disability Duration* for two years 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 confirmation of the purchase of the second year subscription must be provided to DWC within 14 days of the one year anniversary date of this Order;
3. attend and complete the KSTAR Medical Record Documentation course within 180 days from the date of this Order. Confirmation of the attendance and completion of the course must be provided to DWC within 14 days of completion; and
4. complete a three hour Continued Medical Education course titled *Graduated Return to Work* found at <http://osha.washington.edu> within 180 days following the date of this Order. Confirmation of the attendance and completion of the course must be provided to DWC within 14 days of completion.

John A. Thomas, M.D. must mail the certificate of completion of the KSTAR Medical Record Documentation course, confirmation the purchase of the current edition of the *Medical Disability Advisor, Workplace Guidelines for Disability Duration*, and certificate of completion of the CME to the Texas Department of Insurance, Attn: Mary Hughes, DWC Enforcement, 7551 Metro Center Drive, Suite #100, MS-11, Austin, Texas 78744.

The administrative penalty must be paid by company check, cashier's check, or money order made payable to the "State of Texas." John A. Thomas, M.D. must 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 *ACT*  
Commissioner of Workers' Compensation

Approved as to Form and Content:



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Van B. Moreland  
Staff Attorney, DWC Enforcement  
Texas Department of Insurance

