

No. **2021-7067**

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

Date: 11/9/2021

Subject Considered:

Neurodiagnostics & Neuromonitoring Institute, Incorporated
1141 North Loop 1604 East, #105-612
San Antonio, Texas 78232-1397

Consent Order
DWC Enforcement File Nos. 27055 and 27056

General remarks and official action taken:

This is a consent order with Neurodiagnostics & Neuromonitoring Institute, Incorporated (Neurodiagnostics & Neuromonitoring). The commissioner of the Texas Department of Insurance, Division of Workers' Compensation (DWC) considers whether DWC should take disciplinary action against Neurodiagnostics & Neuromonitoring.

Waiver

Neurodiagnostics & Neuromonitoring acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Neurodiagnostics & Neuromonitoring 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. Neurodiagnostics & Neuromonitoring is a health care provider (HCP) operating in the Texas workers' compensation system.

2. Neurodiagnostics & Neuromonitoring was not selected to be tiered in the 2007, 2009, 2010, 2012, 2014, 2016, or 2018 Performance Based Oversight (PBO) assessments.

Failure to Remit a Refund after a Denial of Appeal

3. On [REDACTED] Neurodiagnostics & Neuromonitoring received a proper refund request from the insurance carrier for a [REDACTED] date of service in the amount of [REDACTED]
4. Neurodiagnostics & Neuromonitoring did not issue a refund and instead sent the insurance carrier an appeal letter.
5. On [REDACTED] Neurodiagnostics & Neuromonitoring received the insurance carrier's notice of denied appeal.
6. Neurodiagnostics & Neuromonitoring was required to remit the refund by the 45th day after receiving the insurance carrier's notice of denied appeal, which was [REDACTED]
7. Neurodiagnostics & Neuromonitoring issued a refund to the insurance carrier on [REDACTED] 324 days late.

Failure to Timely Comply with a DWC Order to Produce Documents

8. On [REDACTED] DWC ordered Neurodiagnostics & Neuromonitoring to produce information including, but not limited to, a copy of the refund payment, including the check number and date it issued to the insurance carrier in the amount of [REDACTED] which related to the refund request for the [REDACTED] date of service. Neurodiagnostics & Neuromonitoring received the Order to Produce on [REDACTED] to produce the requested information to DWC by [REDACTED]
9. Neurodiagnostics & Neuromonitoring produced the required information on [REDACTED] 203 days late.

Assessment of Sanction

1. Failure to remit a refund in a timely and cost-effective manner is harmful to the Texas workers' compensation system.
2. Timely submitting information to DWC and complying with DWC orders is imperative to DWC's ability to implement and enforce the Texas Workers' Compensation Act.
3. 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.
4. 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; and the penalty necessary to deter future violations.
5. DWC found the following factors in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e) to be mitigating: Neurodiagnostics & Neuromonitoring's

demonstration of good faith, including actions it took to rectify the consequences of the prohibited act, as COVID-19 and a lack of full staffing caused delays. Neurodiagnostics & Neuromonitoring did submit a timely appeal and did issue the refund on March 3, 2021, the insurance carrier deposited it on March 18, 2021, and the requested documentation was produced on August 13, 2021.

6. Neurodiagnostics & Neuromonitoring 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).
7. Neurodiagnostics & Neuromonitoring 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, and 414.003.
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. Neurodiagnostics & Neuromonitoring 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 §§ 415.0035(e), 415.021(a), and 415.003(5), an HCP commits an administrative violation if it violates the Texas Workers' Compensation Act, a DWC rule, or a commissioner's order or decision.

6. Pursuant to 28 TEX. ADMIN. CODE § 102.9, DWC requires those subject to the Texas Workers' Compensation Act to provide information as necessary. DWC may follow up on a request for information by issuing an order to produce information.
7. Neurodiagnostics & Neuromonitoring violated TEX. LAB. CODE §§ 415.0035(e) and 415.021(a) and 28 TEX. ADMIN. CODE § 102.9 when it failed to comply with a DWC order to produce documents.
8. Pursuant to TEX. LAB. CODE §§ 415.0035(e), 415.021(a), and 415.003(5), an HCP commits an administrative violation if they violate the Texas Workers' Compensation Act, a DWC rule, or a commissioner's order or decision.
9. Pursuant to TEX. LAB. CODE § 408.0271(c) and 28 TEX. ADMIN. CODE § 133.260(e)(1), an HCP who receives a request for a refund from an insurance carrier must either refund the requested amount or submit an appeal to the insurance carrier by the 45th day after receiving the request.
10. Neurodiagnostics & Neuromonitoring violated TEX. LAB. CODE §§ 415.0035(e), 415.021(a), and 415.003(5) when it failed to timely remit the requested payment after receiving notice of the denied appeal.

Order

It is ordered that Neurodiagnostics & Neuromonitoring Institute, Incorporated must pay an administrative penalty of \$2,500 within 30 days from the date of this order. Neurodiagnostics & Neuromonitoring Institute, Incorporated 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:



Amy Norman
Staff Attorney, Enforcement
Compliance and Investigations
TDI, Division of Workers' Compensation

Unsworn Declaration

STATE OF Texas §
§
COUNTY OF Bexar §

Pursuant to the TEX. CIV. PRAC. & REM. CODE § 132.001(a), (b), and (d), my name is Arcadia Fitzpatrick. I hold the position of Manager, Revenue Integrity and am the authorized representative of ABS/ Neurodiagnostics & Neuromonitoring Institute, Inc. My business address is:

2915 W. Bitters Rd. Ste 201, San Antonio, Bexar, TX, 78245.

(Street) (City) (County) (State) (ZIP Code)

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.

Arcadia Fitzpatrick

Declarant

Executed on August 18, 2021.

Confidential Information Redacted
Texas Labor Code §§402.083 and 402.092