

OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF WORKERS' COMPENSATION

Date: **AUG 09 2019**

Subject Considered:

SANDRA E. SILMON, D.C.
5201 South Westmoreland Road
Dallas, Texas 75237-1622

CONSENT ORDER
TDI-DWC ENFORCEMENT FILE NO. 16498

General remarks and official action taken:

The commissioner of workers' compensation (commissioner) considers whether disciplinary action should be taken against Sandra E. Silmon, D.C. (Dr. Silmon).

WAIVER

Dr. Silmon acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Dr. Silmon 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. Silmon holds Texas Doctor of Chiropractic License No. 10592, which was issued by the Texas Board of Chiropractic Examiners on April 3, 2007.
2. Dr. Silmon is a designated doctor (DD) in the Texas workers' compensation system. Dr. Silmon is certified to rate maximum medical improvement (MMI) and assign impairment ratings (IRs). Dr. Silmon was first certified as a DD, to rate MMI, and to assign IRs on September 24, 2012. Dr. Silmon's certifications as a DD, to rate MMI, and to assign IRs will expire on October 15, 2020.
3. Dr. Silmon was classified as "high" tier in the DWC Form-69 measurement in the 2015 and 2017 Performance Based Oversight (PBO) assessments. Dr. Silmon was not classified in the 2007, 2009, 2011, or 2013 PBO assessments.

MEDICAL QUALITY REVIEW NO. 18-27-DD

4. The Texas Department of Insurance, Division of Workers' Compensation (DWC), as authorized by TEX. LAB. CODE §§ 414.002 and 408.1225(b), monitors DDs to determine compliance with the Texas Workers' Compensation Act and rules promulgated by the commissioner.

5. 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. 18-27-DD) of 10 cases in which Dr. Silmon conducted DD examinations of injured employees. The purpose of the audit was to evaluate the medical necessity and appropriateness of additional testing or a referral by Dr. Silmon to resolve a question at issue in each examination.

Submitting Unnecessary Referrals or Ordering or Performing Unnecessary Testing

6. Dr. Silmon submitted unnecessary referrals to other health care providers or ordered or performed unnecessary testing of an injured employee as part of a DD examination in 90% of cases examined (9 out of 10).

Failure to File a DD Report in the Form and Manner Required by DWC

7. Dr. Silmon failed to explain in the DD report why additional testing or a referral was necessary to resolve the question at issue in 100% of cases examined (10 out of 10).

Submission of Inaccurate or Inappropriate Reports Due to Inappropriate or Unreasonable Evaluations

8. Dr. Silmon submitted an inaccurate or inappropriate DD report due to insufficient medical history or physical examination and analysis of medical records in 20% of cases examined (2 out of 10).
9. Specifically, Dr. Silmon inappropriately or unreasonably certified the date of MMI in one case, and inappropriately or unreasonably certified the date of MMI and assigned an inappropriate or unreasonable IR in one case.

ASSESSMENT OF SANCTION

10. Submitting unnecessary referrals to other health care providers or ordering or performing unnecessary testing of an injured employee as part of a DD examination imposes extraneous medical costs on the workers' compensation system and unreasonably delays the completion of the DD's report.
11. Failure to file a DD report in the form and manner required by DWC increases the likelihood of disputes and hinders the ability of DWC and system participants to resolve disputes promptly and fairly.
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; the penalty necessary to deter future violations; and whether the administrative violation has negative impact on the delivery of benefits to an injured employee.
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 promptness and earnestness of actions to prevent future violations; and other matters that justice may require including PBO assessments.
15. Dr. Silmon acknowledges that DWC and Dr. Silmon 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. Silmon 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 §§ 401.021, 402.001, 402.00111, 402.00114, 402.00116, 402.00128, 408.0041, 408.1225, 413.002, 413.044, 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 of workers' compensation may assess an administrative penalty against a person who commits an administrative violation.
4. Pursuant to TEX. LAB. CODE § 408.0231(f)(7), the commissioner may impose sanctions against a doctor who commits an administrative violation, including mandatory participation in training classes.
5. Pursuant to TEX. LAB. CODE §§ 415.003(3) and (5), a health care provider commits an administrative violation if the person makes an unnecessary referral or violates a commissioner rule.
6. Pursuant to 28 TEX. ADMIN. CODE §§ 127.210(a)(5) and (6), the commissioner may sanction a DD for submitting unnecessary referrals to other health care providers or for ordering or performing unnecessary testing of an injured employee as part of a DD's examination.
7. Dr. Silmon violated TEX. LAB. CODE §§ 415.003(3) and (5) and 28 TEX. ADMIN. CODE §§ 127.210(a)(5) and (6) each time she submitted unnecessary referrals to other health care providers or ordered or performed unnecessary testing of an injured employee as part of her DD examination.
8. Pursuant to 28 TEX. ADMIN. CODE § 127.220(a)(7), DD narrative reports must be filed in the form and manner required by DWC and at a minimum summarize any additional testing conducted or referrals made as part of the evaluation and explain why the testing or referral was necessary to resolve a question at issue in the examination.
9. Dr. Silmon violated TEX. LAB. CODE § 415.003(5) each time she filed a DD report that failed to explain why the testing or referral was necessary to resolve a question at issue in the examination.
10. Pursuant to 28 TEX. ADMIN. CODE § 127.210(a)(7), the commissioner may sanction a DD for submission of inaccurate or inappropriate reports due to insufficient medical history or physical examination and analysis of medical records.
11. Pursuant to TEX. LAB. CODE § 408.0231(c)(3), the commissioner may sanction a DD based on evidence from DWC's medical records that a DD's charges, fees, diagnoses, treatments, evaluations, or IRs are substantially different from those the commissioner finds to be fair and reasonable.
12. Dr. Silmon violated 28 TEX. ADMIN. CODE § 127.210(a)(7) and TEX. LAB. CODE §§ 408.0231(c)(3) and 415.003(5) each time she submitted an inaccurate or inappropriate DD

report that inappropriately or unreasonably addressed the question or questions she was ordered to answer, including whether the injured employee had reached MMI or what the injured employee's IR was.

ORDER

Sandra E. Silmon, D.C. is ORDERED:

1. To pay an administrative penalty of \$2,000 within 30 days from the date of this Order;
2. To attend and complete a KSTAR Medical Record Keeping course within 180 days from the date of this Order. Confirmation of the attendance and completion of the workshop must be provided to DWC within 14 days of completion;
3. To complete the *Designated Doctor 101 Webinar* within 180 days from the date of this Order. Confirmation of the attendance and completion of the workshop must be provided to DWC within 14 days of completion;
4. To complete the *Designated Doctor Case-Based Webinar Series: Module 1 – Maximum Medical Improvement* within 180 days from the date of this Order. Confirmation of the attendance and completion of the workshop must be provided to DWC within 14 days of completion;
5. To complete the *Designated Doctor Case-Based Webinar Series: Module 2 – Spine, Maximum Medical Improvement, Impairment Rating, and Extent of Injury* within 180 days from the date of this Order. Confirmation of the attendance and completion of the workshop must be provided to DWC within 14 days of completion;
6. To complete the *Designated Doctor Case-Based Webinar Series: Module 3 – Upper Extremity Maximum Medical Improvement and Impairment Rating* within 180 days from the date of this Order. Confirmation of the attendance and completion of the workshop must be provided to DWC within 14 days of completion; and
7. To complete the *Designated Doctor Case-Based Webinar Series: Module 4 – Lower Extremity Maximum Medical Improvement and Impairment Rating* within 180 days from the date of this Order. Confirmation of the attendance and completion of the workshop must be provided to DWC within 14 days of completion.

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

Dr. Silmon must mail certificates of completion to the Texas Department of Insurance, Attn: Mary Hughes, DWC Enforcement, 7551 Metro Center Drive, Suite #100, MS-11, Austin, Texas 78744.



Cassie Brown *WCTU*
Commissioner of Workers' Compensation

Approved as to Form and Content:



Glen Imes
Staff Attorney, DWC Enforcement
Texas Department of Insurance

