

No. 2019 5931

OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF WORKERS' COMPENSATION

Date: APR 09 2019

Subject Considered:

JARRETT HARVEY ARMSTRONG, D.C.
9801 Westheimer Road, Suite 800
Houston, Texas 77042-3979

CONSENT ORDER
TDI-DWC ENFORCEMENT FILE NO. 16764

General remarks and official action taken:

The commissioner of workers' compensation (commissioner) considers whether disciplinary action should be taken against Jarrett Harvey Armstrong, D.C. (Dr. Armstrong).

WAIVER

Dr. Armstrong acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Dr. Armstrong 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. Armstrong holds Texas Doctor of Chiropractic License No. 5009, which was issued by the Texas Board of Chiropractic Examiners on January 6, 1989.
2. Dr. Armstrong is a designated doctor (DD) in the Texas workers' compensation system. Dr. Armstrong is certified to rate maximum medical improvement (MMI) and assign impairment ratings (IRs). Dr. Armstrong was first certified as a DD, to rate MMI, and to assign IRs on December 21, 1999. Dr. Armstrong's certifications as a DD, to rate MMI, and to assign IRs will expire on July 12, 2019. Dr. Armstrong has identified Genesis Medical Management Solutions as his administrative services company and Genesis IME as his billing agent since May 1, 2013.
3. Dr. Armstrong was not classified in the 2007, 2009, 2011, 2013, 2015, or 2017 Performance Based Oversight (PBO) assessments.

MEDICAL QUALITY REVIEW NO. 18-24-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. 18-24-DD) of 10 cases in which Dr. Armstrong 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. Armstrong to resolve a question at issue in each examination.

SUBMITTING UNNECESSARY REFERRALS/ORDERING OR PERFORMING UNNECESSARY TESTING

6. Dr. Armstrong submitted unnecessary referrals to other health care providers and/or ordered or performed unnecessary testing of an injured employee as part of a DD examination in 100% of cases examined (10 out of 10).

FAILURE TO FILE DD REPORT IN THE FORM AND MANNER REQUIRED BY DWC

7. Dr. Armstrong 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).
8. Dr. Armstrong failed to sufficiently explain how he determined the answer to each question within a reasonable degree of medical probability in 90% of cases examined (9 out of 10).

SUBMISSION OF INACCURATE OR INAPPROPRIATE REPORTS DUE TO INNAPPROPRIATE OR UNREASONABLE EVALUATIONS

9. Dr. Armstrong submitted an inaccurate or inappropriate DD report due to insufficient medical history or physical examination and analysis of medical records in 10% of cases examined (1 out of 10).
10. Specifically, Dr. Armstrong assigned an inappropriate or unreasonable IR in one case.

ASSESSMENT OF SANCTION

11. 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.
12. 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.

13. 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.
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 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.
15. Dr. Armstrong acknowledges that DWC and Dr. Armstrong 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. Armstrong 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).
17. Dr. Armstrong neither admits nor denies the allegations set forth in this consent order but does not contest the entry of this order. This consent order and its requirements are entered into in the nature of compromise and to avoid the costs of litigation and further expenditure of resources in this matter.

CONCLUSIONS OF LAW

2019 5931

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), a health care provider commits an administrative violation if the person makes an unnecessary referral.
6. Pursuant to TEX. LAB. CODE § 415.003(5), a health care provider commits an administrative violation if the person violates a commissioner rule.
7. Pursuant to 28 TEX. ADMIN. CODE § 127.210(a)(5), the commissioner may sanction a DD for submitting unnecessary referrals to other health care providers.
8. Pursuant to 28 TEX. ADMIN. CODE § 127.210(a)(6), the commissioner may sanction a DD for ordering or performing unnecessary testing of an injured employee as part of a DD's examination.
9. Dr. Armstrong violated TEX. LAB. CODE §§ 415.003(3) and (5) and 28 TEX. ADMIN. CODE §§ 127.210(a)(5) and (6) each time he submitted unnecessary referrals to other health care providers and/or ordered or performed unnecessary testing of an injured employee as part of her DD examination.
10. 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.

11. Dr. Armstrong violated TEX. LAB. CODE § 415.003(5) each time he filed a DD report that failed to explain why the testing or referral was necessary to resolve a question at issue in the examination.
12. Pursuant to 28 TEX. ADMIN. CODE § 127.220(a)(3), DD narrative reports must be filed in the form and manner required by DWC and at a minimum sufficiently explain how the DD determined the answer to each question within a reasonable degree of medical probability.
13. Dr. Armstrong violated TEX. LAB. CODE § 415.003(5) each time he filed a DD report that failed to sufficiently explain how he determined the answer to each question within a reasonable a reasonable degree of medical probability.
14. 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.
15. 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.
16. Dr. Armstrong violated 28 TEX. ADMIN. CODE § 127.210(a)(7) and TEX. LAB. CODE §§ 408.0231(c)(3) and 415.003(5) when he submitted an inaccurate or inappropriate DD report that inappropriately or unreasonably addressed the question or questions he was ordered to answer, including what the injured employee's IR was.


ORDER

It is ORDERED that, Jarrett Harvey Armstrong, D.C., shall be removed from the Texas workers' compensation system's designated doctor list, shall no longer participate, in or out of state, as a designated doctor in the Texas workers' compensation system, and shall not apply for certification as a designated doctor in the Texas workers' compensation system for four years from the date of this Order.



Cassie Brown *NCTW*
Commissioner of Workers' Compensation

Approved as to Form and Content:



Glen Imes
Staff Attorney, DWC Enforcement
Texas Department of Insurance

