

No. 4058

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

Date: JUL 27 2015

**Subject Considered:**

**CHARLES FRANK CASE, D.C.**  
5725 W. Highway 290, Ste. 202  
Austin, Texas 78735-8722

**CONSENT ORDER**  
TDI ENFORCEMENT FILE NO. 9204

**General remarks and official action taken:**

The commissioner of workers' compensation considers whether disciplinary action should be taken against Charles Frank Case, D.C. (Dr. Case).

Dr. Case acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Dr. Case 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 of workers' compensation makes the following findings of fact:

1. Dr. Case holds a Texas Doctor of Chiropractic License No. 06277, issued on January 1, 1994. Dr. Case is a health care provider who performs designated doctor (DD) examinations in the Texas workers' compensation system. Dr. Case's DD certification and Maximum Medical Improvement/Impairment Rating (MMI/IR) certification expired on March 19, 2015.
2. Dr. Case was not classified in the 2007, 2009, 2011, or the 2013 Performance Based Oversight assessments.

**Medical Quality Review No. 15-4 DD**

3. Dr. Case performed a DD examination on October 11, 2013, to determine extent of injury. In this case, the injured employee was first injured in January 2013, and then suffered a secondary accident in April 2013.
4. At the time of the October 11, 2013 evaluation, Dr. Case ordered a surface EMG to the injured employee's cervical spine. Dr. Case also ordered an orthopedic evaluation.
5. Dr. Case completed his DD report on December 23, 2013.
6. In his narrative report, dated December 23, 2013, Dr. Case concluded the second mechanism of injury did cause or aggravate all of the disputed conditions. However, Dr. Case did not describe his answer to this question to a reasonable degree of medical probability.
7. The division mailed a Letter of Clarification (LOC), dated January 29, 2014, to Dr. Case.
8. The division sent a second LOC, dated March 4, 2014. The Hearing Officer proposed obtaining a second lumbar MRI to compare to a February 2013 MRI for delineation purposes as there was no image studies after the April 2013 incident.
9. In his response to the second LOC, dated March 11, 2014, Dr. Case agreed with the Hearing Officer to obtain a second lumbar MRI.
10. On March 14, 2014, a lumbar MRI was performed.
11. After review of the March 14, 2014 MRI, Dr. Case responded with a narrative report on April 11, 2014. In his response, Dr. Case explained the second incident did aggravate some of the disputed conditions.
12. In his April 11, 2014 narrative report, Dr. Case's determination of aggravation was not supported by any medical literature. Comparing the February 2, 2013 and the March 4, 2014 MRIs, there was no worsening of the disputed conditions.
13. In his narrative reports, dated December 23, 2013 and April 11, 2014, Dr. Case addressed a medical condition which was not in dispute and which he was not ordered to consider.
14. Dr. Case's DD Data Examination Report does not include check marks on the form itself as to what is or is not included conditions of the April 2013 injury.
15. Dr. Case's DD Data Examination Report does not include either the surface EMG or the orthopedic referrals or examinations.
16. The surface EMG ordered by Dr. Case was unnecessary in assisting him to diagnose or answer questions pertaining to the extent of injuries as posed.

17. Dr. Case does not reflect how the surface EMG tests were used or incorporated, or assisted him with his decision process in his December 13, 2013 narrative report.
18. The orthopedic evaluation ordered by Dr. Case was unnecessary to the case in assisting him to diagnosis or with extent questions as posed.
19. The orthopedic evaluation ordered by Dr. Case was not integrated into any of his narrative reports.

**Failure to Timely File the Report of Medical Evaluation and Narrative Report**

20. In three separate cases, Dr. Case failed to timely file the Report of Medical Evaluation and his narrative report
21. On May 5, 2014, Dr. Case performed a designated doctor examination. The Report of Medical Evaluation and narrative report were due on May 27, 2014. Dr. Case filed the Report of Medical Evaluation and narrative report on June 13, 2014, which is 17 days late.
22. On May 20, 2014, Dr. Case performed a designated doctor examination. The Report of Medical Evaluation and narrative report were due on May 30, 2014. Dr. Case filed the Report of Medical Evaluation and narrative report on June 3, 2014, which is four days late.
23. On March 27, 2014, Dr. Case performed a designated doctor examination. The Report of Medical Evaluation and narrative report were due on April 7, 2014. The division granted Dr. Case's request to extend the deadline to May 8, 2014, to file the report and narrative. Dr. Case filed the Report of Medical Evaluation and narrative report on June 6, 2014, which is 29 days late.

**CONCLUSIONS OF LAW**

The commissioner of workers' compensation makes the following conclusions of law:

1. The commissioner of workers' compensation has jurisdiction over this matter pursuant to TEX. LAB. CODE ANN. §§ 402.001, 402.00111, 402.00114, 402.00116, 402.00128, 408.0041, 408.0231, 413.0511, 414.002, 415.003, and 415.021; 28 TEX. ADMIN. CODE §§ 127.10, 127.210, 127.220, and 180.26; and TEX. GOV'T CODE ANN. §§ 2001.051 – 2001.178.
2. The commissioner of workers' compensation has authority to informally dispose of this matter as set forth herein under TEX. GOV'T CODE ANN. § 2001.056, TEX. LAB. CODE ANN. §§ 401.021 and 402.00128(b)(7), and 28 TEX. ADMIN. CODE § 180.26(h).
3. Pursuant to TEX. LAB. CODE ANN. § 415.021, a person commits an administrative violation if the person violates, fails to comply with, or refuses to comply with this subtitle or a rule,

- order, or decision of the commissioner. The commissioner of workers' compensation may assess an administrative penalty against a person who commits an administrative violation.
4. Pursuant to TEX. LAB. CODE ANN. § 408.0231(c)(3), the criteria for recommending or imposing sanctions may include anything the commissioner of workers' compensation considers relevant, including evidence from the division's medical records that the applicable doctor's charges, fees, diagnoses, treatments, evaluations, or impairment ratings are substantially different from those the commissioner finds to be fair and reasonable based on either a single determination or a pattern of practice.
  5. Dr. Case violated TEX. LAB. CODE ANN. § 408.0231(c)(3) as his narrative report was unfair and unreasonable when determination of aggravation was not supported by any medical literature
  6. Pursuant to TEX. LAB. CODE ANN. § 415.003(3), a health care provider commits an administrative violation if the person makes an unnecessary referral.
  7. Dr. Case violated TEX. LAB. CODE ANN. § 415.003(3) when he referred the injured employee to have a surface EMG and an orthopedic evaluation that were unnecessary to resolve the issues in question.
  8. Pursuant to 28 TEX. ADMIN. CODE § 127.210(a)(5), the commissioner may revoke or suspend a designated doctor's certification as a designated doctor or otherwise sanction a designated doctor for submitting unnecessary referrals to other health care providers for the answering of any question submitted to the designated doctor by the division.
  9. Dr. Case violated 28 TEX. ADMIN. CODE § 127.210(a)(5) when he referred the injured employee to have a surface EMG and an orthopedic evaluation performed that were unnecessary to resolve the issues in question.
  10. Pursuant to 28 TEX. ADMIN. CODE § 127.210(a)(6), the commissioner may revoke or suspend a designated doctor's certification as a designated doctor or otherwise sanction a designated doctor for ordering or performing unnecessary testing of an injured employee as part of a designated doctor examination.
  11. Dr. Case violated 28 TEX. ADMIN. CODE § 127.210(a)(6) when he ordered the injured employee to have a surface EMG performed that was unnecessary as a part of his designated doctor examination.
  12. Pursuant to 28 TEX. ADMIN. CODE § 127.210(a)(7), the commissioner may revoke or suspend a designated doctor's certification as a designated doctor or otherwise sanction a designated doctor for submitting inaccurate or inappropriate reports due to insufficient medical history of physical examination and analysis of the medical record.

13. Dr. Case violated 28 TEX. ADMIN. CODE § 127.210(a)(7) when he omitted pertinent facts related the injured employee's injuries sustained from a work related accident in January 2013.
14. Pursuant to 28 TEX. ADMIN. CODE § 127.220(a)(2), a designated doctor report must be filed in the form and manner required by the division and, at a minimum, provide a clearly defined answer for each questions to be addressed by the designated doctor examination and only for each of those questions.
15. Dr. Case violated 28 TEX. ADMIN. CODE § 127.220(a)(2) when he addressed a medical condition which was not in dispute and which he was not ordered to consider in his narrative reports, dated December 23, 2013 and April 11, 2014.
16. Pursuant to 28 TEX. ADMIN. CODE § 127.220(a)(3), a designated doctor report must be filed in the form and manner required by the division and, at a minimum, sufficiently explain how the designated doctor determined the answer to each question within a reasonable degree of probability.
17. Dr. Case violated 28 TEX. ADMIN. CODE § 127.220(a)(3) when he failed to sufficiently explain how he determined to a reasonable degree medical probability *how* the mechanism of the April 2013 injuries were caused or aggravated for each disputed condition.
18. Pursuant to 28 TEX. ADMIN. CODE § 127.220(a)(7), a designated doctor report must be filed in the form and manner required by the division and, at a minimum, summarize any additional testing conducted or referrals made and why such testing or referral was necessary to resolve a question at issue in his narrative reports.
19. Dr. Case violated 28 TEX. ADMIN. CODE § 127.220(a)(7) when he failed to summarize his reasons for the surface EMG study and the orthopedic surgeon evaluation and why these referrals were necessary to resolve a question at issue in his narrative reports.
20. Pursuant to 28 TEX. ADMIN. CODE § 127.220(c)(6), a designated doctor report must be filed in the form and manner required by the division and, at a minimum, disclose any of the addition testing conducted or referrals made as part of the evaluation including the identity of the health care providers which he referred the injured employee; the types of tests conducted or referrals made and the dates the testing or referrals; and the dates the examinations occurred in his DD Examination Data Report.
21. Dr. Case violated 28 TEX. ADMIN. CODE § 127.220(c)(6) when he failed disclose his referral to the orthopedic surgeon for an evaluation made as part of his evaluation including the identity of the health care providers which he referred the injured employee; the types of tests conducted or referrals made and the date the orthopedic examination occurred in his DD Examination Data Report and his narrative reports.

22. Pursuant 28 TEX. ADMIN. CODE § 127.10(c), if a request for additional time is approved by the division, then the designated doctor shall complete the Report of Medical Evaluation and the narrative report within in the additional time approved by the division.
23. In one case, Dr. Case violated 28 TEX. ADMIN. CODE § 127.10(c) when he failed to file the Report of Medical Evaluation and his narrative report by the division approved deadline of May 8, 2014.
24. Pursuant to 28 TEX. ADMIN. CODE § 127.10(d), a designated doctor must file a Report of Medical Evaluation and a narrative report no later than the seventh working day after the later of the date of the examination or the receipt of the medical report.
25. In two cases, Dr. Case violated 28 TEX. ADMIN. CODE § 127.10(d) when he failed to file his Report of Medical Evaluation and his narrative report within seven working days of the date of examination.

**ORDER**

It is therefore ORDERED, that as of the date of this consent order, Charles Frank Case, D.C., will not re-apply for DD certification or re-apply for MMI/IR certification in the Texas workers' compensation system for five years.

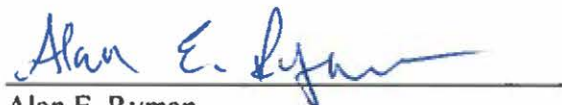
It is FURTHER ORDERED that, if Charles Frank Case, D.C. should re-apply for the DD certification within five years, the division will not grant the DD certification, and his re-application will constitute a violation of this consent order.



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W. Ryan Brannan  
Commissioner of Workers' Compensation

Approved as to Form and Content:



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Alan E. Ryman  
Staff Attorney, Compliance Division  
Texas Department of Insurance

AFFIDAVIT

STATE OF TEXAS           §  
  §  
COUNTY OF Grayson §

Before me, the undersigned authority, personally appeared the affiant, Charles Frank Case, D.C. who being by me duly sworn, deposed as follows:

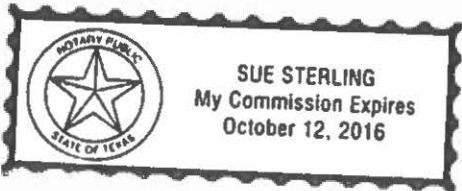
“My name is Charles Frank Case, D.C. I am of sound mind, capable of making this statement, and have personal knowledge of these facts, which are true and correct.

I have knowingly and voluntarily entered into the foregoing consent order and agree with and consent to the issuance and service of the same by the commissioner of workers' compensation of the State of Texas.”

Charles F. Case  
Affiant

SWORN TO AND SUBSCRIBED before me on June 12, 2015.

(NOTARY SEAL)



Sue Sterling  
Signature of Notary Public  
Sue Sterling  
Printed Name of Notary Public