

OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF WORKERS' COMPENSATION

SEP 10 2015

Date: _____

Subject Considered:

HANK K. MILLER, D.C.
5790 W. Highway 287
Midlothian, TX 76065-4105

CONSENT ORDER
TDI ENFORCEMENT FILE NO. 9433

General remarks and official action taken:

The commissioner of workers' compensation considers whether disciplinary action should be taken against Hank K. Miller, D.C. (Dr. Miller).

WAIVER

Dr. Miller acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Dr. Miller 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. Miller was granted a license by the Texas Board of Chiropractic Examiners on July 30, 1993. Dr. Miller holds License Number 06235. Dr. Miller is a health care provider who was certified to perform designated doctor (DD) examinations, certify maximum medical improvement (MMI), and assign impairment ratings (IR) in the Texas workers' compensation system. Dr. Miller voluntarily surrendered his DD certification on May 27, 2015.
2. Dr. Miller was not classified in the 2007, 2009, 2011, or 2013 Performance Based Oversight assessments.

Medical Quality Review Number 15-7 DD

3. The division, as authorized by TEX. LAB. CODE ANN. § 414.002, monitors system participants to determine compliance with the Texas Workers' Compensation Act and rules promulgated by the commissioner of workers' compensation.

4. The division's Medical Advisor (whose duties are defined at TEX. LAB. CODE ANN. § 413.0511) and Medical Quality Review Panel (MQRP) (as established pursuant to TEX. LAB. CODE ANN. § 413.0512) conducted a complaint-based medical quality review (MQR), which was initiated in accordance with the approved Medical Quality Review Process, for eight examinations where Dr. Miller performed DD examinations. The DD examinations were conducted on injured employees between May 2014 and August 2014. Dr. Miller was asked to answer the questions of MMI, IR, extent of injury (EOI), and return to work (RTW) in the DD examinations.
5. The division also received a separate complaint against Dr. Miller for a DD examination that was performed in August 2014.

**Maximum Medical Improvement (MMI) and Impairment Rating (IR)
Determination**

6. Dr. Miller failed to perform a complete medical examination of the injured employees when determining MMI. Dr. Miller failed to sufficiently provide a clearly defined answer for each question to be addressed, or explain how he determined an answer for each question with a reasonable degree of medical probability in nine cases.
7. In all nine cases, Dr. Miller did not provide a narrative that described the rationale for placing the injured employee at MMI or not at MMI.
8. In all nine cases, Dr. Miller failed to perform a complete physical examination to determine MMI.
9. In five cases, Dr. Miller failed to sufficiently provide a description and explanation of specific clinical findings related to each impairment and failed to provide a description of how the findings relate to and compare with the criteria described in the applicable chapter of the AMA Guides.

Improper Extent of Injury (EOI) Analysis

10. Dr. Miller did not sufficiently document an explanation for the medical decision making regarding the EOI, or list the disputed conditions or how they related to the injury in one case.
11. Dr. Miller failed to submit multiple certifications of MMI and IR to account for the possible outcomes of the compensable injury in two cases.

Improper Return to Work (RTW) Analysis

12. Dr. Miller failed to document his rationale for the work status activity restrictions in five cases.
13. Dr. Miller also failed to file a Work Status Report (DWC Form-73) in four instances.

**Failure to List Specific Medical Records and to
Reschedule a DD Examination**

14. In eight cases, Dr. Miller failed to list specific medical records he reviewed as part of the evaluation and the dates of those documents.
15. In one case, Dr. Miller failed to reschedule the DD examination when he was not provided with the treating doctor records prior to the examination.

Unnecessary Testing

16. Dr. Miller ordered an electromyography (EMG) test which was unnecessary because there were no neurological findings to support it. Further, Dr. Miller failed to provide justification in his narrative report for why the EMG test was necessary.

CONCLUSIONS OF LAW

The commissioner of workers' compensation makes the following conclusions of law¹:

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, 408.0231, 413.044, 413.0511, 415.003, 415.021, and 415.0215; 28 TEX. ADMIN. CODE §§ 127.5, 127.10, 127.200, 127.210, 127.220, 130.1, 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. § 415.0215 and 28 TEX. ADMIN. CODE § 180.26, the sanctions the commissioner may impose include depriving a person of the right to practice before the division or of the right to receive remuneration under the Act.
4. Pursuant to TEX. LAB. CODE ANN. § 415.021(a), 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. 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. The administrative penalty shall not exceed \$25,000 per day per occurrence. Each day of noncompliance constitutes a separate violation.

¹ All references to the Texas Labor Code and the Texas Administrative Code that relate to the findings of fact regarding violations, as set forth in this consent order, are those that were in effect in 2012 and beyond when the violations occurred.

5. In accordance with TEX. LAB. CODE ANN. § 415.021(a), Dr. Miller committed an administrative violation each time he failed to comply with the Texas Labor Code or violated a commissioner rule.
6. Pursuant to 28 TEX. ADMIN. CODE § 130.1(b)(4)(B), to certify MMI the certifying doctor must perform a complete medical examination of the injured employee for the explicit purpose of determining MMI.
7. Dr. Miller violated 28 TEX. ADMIN. CODE § 130.1(b)(4)(B), each time he certified MMI without performing a complete medical examination for the explicit purpose of determining MMI.
8. Pursuant to 28 TEX. ADMIN. CODE § 127.200(a)(7), all designated doctors must apply the appropriate edition to the AMA Guides and division-adopted return-to-work guidelines and consider division adopted treatment guidelines or other evidence based medicine when appropriate.
9. Dr. Miller violated 28 TEX. ADMIN. CODE § 127.200(a)(7) each time he failed to consider the division adopted guidelines in the determination of MMI when it was appropriate to do so.
10. Pursuant to 28 TEX. ADMIN. CODE § 130.1(c)(3)(D)(ii), assignment of an impairment rating for the current compensable injury must be based on the injured employee's condition as of the MMI date considering the medical record and the certifying examination. The doctor assigning the impairment rating must compare the results of the analysis with the impairment criteria and provide a description of how the findings relate to and compare with the criteria described in the applicable chapter of the AMA Guides. The doctor's inability to obtain required measurements must be explained.
11. Dr. Miller violated 28 TEX. ADMIN. CODE § 130.1(c)(3)(D) each time he failed to provide a description of how his findings of impairment compared with the criteria described in the AMA Guides.
12. Pursuant to 28 TEX. ADMIN. CODE § 127.10(d), if a designated doctor is simultaneously requested to address MMI and/or impairment rating and the extent of the compensable injury in a single examination, the designated doctor must provide multiple certifications of MMI and impairment ratings that take into account each possible outcome for the extent of the injury.
13. Dr. Miller violated 28 TEX. ADMIN. CODE § 127.10(d) each time he failed to provide multiple certifications of MMI and IR when determining EOI in two cases.
14. Pursuant to 28 TEX. ADMIN. CODE § 127.220(a)(3), designated doctor narrative reports 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 medical probability.

15. Dr. Miller violated 28 TEX. ADMIN. CODE § 127.220(a)(3) each time he failed to explain how he determined MMI, IR, or extent of injury conclusion in his DD narrative report.
16. Dr. Miller violated 28 TEX. ADMIN. CODE § 127.220(a)(3) each time he failed to document his rationale for work status activity restrictions .
17. Pursuant to 28 TEX. ADMIN. CODE § 127.10(e), a DD who examines an injured employee pursuant to any question relating to return to work is required to file a Work Status Report and a narrative report within seven working days of the date of the examination of the injured employee.
18. Dr. Miller violated 28 TEX. ADMIN. CODE § 127.10(e) each time he failed to file a work status report.
19. Pursuant to 28 TEX. ADMIN. CODE § 127.220(a) (9), designated doctor narrative reports must be filed in the form and manner required by the division and at a minimum list the specific medical records or other documents the designated doctor reviewed as part of the evaluation, including the dates of those documents and which, if any, medical records were provided by the injured employee.
20. Dr. Miller violated 28 TEX. ADMIN. CODE § 127.220(a) (9), each time he failed to document a physical examination and list specific medical records reviewed.
21. 28 TEX. ADMIN. CODE § 127.10(a)(3), the treating doctor and insurance carrier must ensure that the required records and analyses (if any) are received by the designated doctor no later than three working days prior to the date of the designated doctor examination. If the designated doctor has not received the medical records or any part thereof at least three working days prior to the examination, the designated doctor must report this violation to the division within one working day of not timely receiving the records. Once notified, the division must take action necessary to ensure that the designated doctor receives the records. If the designated doctor does not receive the medical records within one working day of the examination or if the designated doctor does not have sufficient time to review the late medical records before the examination, the designated doctor must reschedule the examination to occur no later than 21 days after receipt of the records.
22. Dr. Miller violated 28 TEX. ADMIN. CODE § 127.10(a)(3) when he failed to reschedule a DD examination when he did not have the records to proceed with the examination.
23. Pursuant to 28 TEX. ADMIN. CODE § 127.210(a)(6), the commissioner may sanction a designated doctor for ordering or performing unnecessary testing of an injured employee as part of a designated doctor examination.
24. Pursuant to 28 TEX. ADMIN. CODE § 127.220(a)(7), designated doctor narrative reports must be filed in the form and manner prescribed by the division and at a minimum explain why the testing or referral was necessary to resolve a question at issue in the examination.

25. Dr. Miller violated 28 TEX. ADMIN. CODE § 127.220(a)(7), and may be sanctioned pursuant to 28 TEX. ADMIN. CODE § 127.210(a)(6), each time he ordered unnecessary testing and failed to explain his rationale for ordering the testing during a DD examination.

ORDER

Hank K. Miller, D.C. is ORDERED to pay a \$5,000 administrative penalty. Payment is due within 30 days from the date of this Order. Payment must be paid by company check, cashier's check, or money order made payable to the "State of Texas" and mailed to the Texas Department of Insurance, Compliance Division-DWC, MC-9999, P.O. Box 149104, Austin, Texas 78714-9104.

Hank K. Miller, D.C. also agrees not to re-apply for the division's designated doctor certification. In addition, Hank K. Miller, D.C. will not re-apply for MMI/IR credentials. In the event Hank K. Miller, D.C. does apply, the division will not grant the DD certification or MMI/IR credentials.



W. Ryan Bramman 005
Commissioner of Workers' Compensation

Approved as to Form and Content:



Jeffrey Bulloch
Staff Attorney, Compliance Division
Texas Department of Insurance

AFFIDAVIT

STATE OF TEXAS §
 §
COUNTY OF Ellis. §

Before me, the undersigned authority, personally appeared the affiant, Hank K. Miller, D.C. who being by me duly sworn, deposed as follows:

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

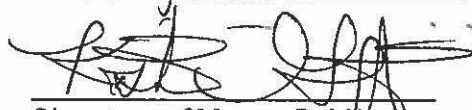
I have knowingly and voluntarily entered into the foregoing consent order and agree with and consent to the issuance and service of the same by the commissioner of workers' compensation of the State of Texas.”



Affiant

SWORN TO AND SUBSCRIBED before me on August 25, 2015.

(NOTARY SEAL)



Signature of Notary Public
Kristin Griffin
Printed Name of Notary Public

