

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

Date: OCT 08 2019

**Subject Considered:**

**ANDREW MICHAEL GARRETT, D.C.**  
3901 Kirby Drive  
Denton, Texas 76210-0316

**CONSENT ORDER**

TDI-DWC ENFORCEMENT FILE NOS. 17505, 19927, 19938, 19940, 19941, 19942, 19943, 19944, 19946, 19948, 19949, 19950, 19952, 19984, and 19985

**General remarks and official action taken:**

The commissioner of workers' compensation (commissioner) considers whether disciplinary action should be taken against Andrew Michael Garrett, D.C. (Dr. Garrett).

**WAIVER**

Dr. Garrett acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Dr. Garrett 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. Garrett holds Texas Doctor of Chiropractic License No. 10413, which was issued by the Texas Board of Chiropractic Examiners on September 5, 2006.
2. Dr. Garrett is a designated doctor (DD) in the Texas workers' compensation system. Dr. Garrett is certified to rate maximum medical improvement (MMI) and assign impairment ratings (IRs). Dr. Garrett was first certified as a DD, to rate MMI, and to assign IRs on October 3, 2006. Dr. Garrett's certifications as a DD, to rate MMI, and to assign IRs will expire on October 10, 2019.
3. Dr. Garrett was not selected to be tiered in the 2007, 2009, 2011, 2013, 2015, or 2017 PBO assessments.

**FAILURE TO TIMELY FILE DD REPORT FOLLOWING A DD EXAMINATION**

**Instance One**

4. On December 27, 2017, Dr. Garrett performed a DD examination of an injured employee to determine the issues of MMI and IR.
5. The examination was deemed complete on December 27, 2017. Therefore, Dr. Garrett was required to file a DD report with the Texas Department of Insurance, Division of Workers' Compensation (DWC) no later than seven working days after the exam, or by January 8, 2018.
6. Dr. Garrett failed to file a DD report with DWC, and a new DD had to be appointed.

**Instance Two**

7. On February 14, 2018, Dr. Garrett performed a DD examination of an injured employee to determine the issues of MMI, IR, and return to work (RTW).
8. Prior to completing the examination, Dr. Garrett determined that additional testing was necessary in order to complete the examination. Per 28 TEX. ADMIN. CODE § 127.10(c), any additional testing or the referral examination and the DD's report must be completed within 15 working days of the DD's physical examination of the injured employee unless the DD receives DWC approval for additional time before the expiration of the 15 working days. On February 26, 2018, Dr. Garrett submitted a request to DWC for additional time to submit the report, which was denied by DWC on February 27, 2018. Therefore, Dr. Garrett was required to file the DD report with DWC no later than 15 working days after the exam, or by March 7, 2018.
9. Dr. Garrett failed to file a DD report with DWC, and a new DD had to be appointed.

**Instance Three**

10. On February 21, 2018, Dr. Garrett performed a DD examination of an injured employee to determine the issues of MMI and IR.
11. The examination was deemed complete on February 21, 2018. Therefore, Dr. Garrett was required to file a DD report with DWC no later than seven working days after the exam, or by March 2, 2018.
12. Dr. Garrett failed to file a DD report with DWC, and a new DD had to be appointed.

**Instance Four**

13. On February 21, 2018, Dr. Garrett performed a DD examination of an injured employee to determine the issues of MMI and IR.

14. The examination was deemed complete on February 21, 2018. Therefore, Dr. Garrett was required to file a DD report with DWC no later than seven working days after the exam, or by March 2, 2018.
15. Dr. Garrett failed to file a DD report with DWC, and a new DD had to be appointed.

**Instance Five**

16. On March 3, 2018, Dr. Garrett performed a DD examination of an injured employee to determine the issues of MMI and IR.
17. The examination was deemed complete on March 3, 2018. Therefore, Dr. Garrett was required to file a DD report with DWC no later than seven working days after the exam, or by March 13, 2018.
18. Dr. Garrett failed to file a DD report with DWC, and a new DD had to be appointed.

**Instance Six**

19. On March 14, 2018, Dr. Garrett performed a DD examination of an injured employee to determine the issues of MMI and IR.
20. The examination was deemed complete on March 14, 2018. Therefore, Dr. Garrett was required to file a DD report with DWC no later than seven working days after the exam, or by March 23, 2018.
21. Dr. Garrett failed to file a DD report with DWC, and a new DD had to be appointed.

**Instance Seven**

22. On March 17, 2018, Dr. Garrett performed a DD examination of an injured employee to determine the issues of MMI and IR.
23. The examination was deemed complete on March 17, 2018. Therefore, Dr. Garrett was required to file a DD report with DWC no later than seven working days after the exam, or by March 27, 2018.
24. Dr. Garrett failed to file a DD report with DWC, and a new DD had to be appointed.

**Instance Eight**

25. On March 24, 2018, Dr. Garrett performed a DD examination of an injured employee to determine the issues of MMI, IR, extent of injury (EOI), and RTW.
26. The examination was deemed complete on March 24, 2018. Therefore, Dr. Garrett was required to file a DD report with DWC no later than seven working days after the exam, or by April 3, 2018.

27. Dr. Garrett failed to file a DD report with DWC, and a new DD had to be appointed.

**Instance Nine**

28. On March 24, 2018, Dr. Garrett performed a DD examination of an injured employee to determine the issues of MMI, IR, and EOI.
29. The examination was deemed complete on March 24, 2018. Therefore, Dr. Garrett was required to file a DD report with DWC no later than seven working days after the exam, or by April 3, 2018.
30. Dr. Garrett failed to file a DD report with DWC, and a new DD had to be appointed.

**Instance 10**

31. On March 24, 2018, Dr. Garrett performed a DD examination of an injured employee to determine the issue of EOI.
32. The examination was deemed complete on March 24, 2018. Therefore, Dr. Garrett was required to file a DD report with DWC no later than seven working days after the exam, or by April 3, 2018.
33. Dr. Garrett failed to file a DD report with DWC, and a new DD had to be appointed.

**Instance 11**

34. On March 24, 2018, Dr. Garrett performed a DD examination of an injured employee to determine the issues of MMI and IR.
35. The examination was deemed complete on March 24, 2018. Therefore, Dr. Garrett was required to file a DD report with DWC no later than seven working days after the exam, or by April 3, 2018.
36. Dr. Garrett failed to file a DD report with DWC, and a new DD had to be appointed.

**REFUSAL TO PERFORM A SUBSEQUENT DD EXAMINATION**

**Instance One**

37. On April 19, 2018, Dr. Garrett was offered a subsequent appointment to perform a DD examination of an injured employee.
38. On April 27, 2018, Dr. Garrett refused to accept the appointment and requested the appointment be re-designated.

**Instance Two**

39. On April 25, 2018, Dr. Garrett was offered a subsequent appointment to perform a DD examination of an injured employee.
40. On April 27, 2018, Dr. Garrett refused to accept the appointment and requested the appointment be re-designated.

**Instance Three**

41. On May 17, 2018, Dr. Garrett was offered a subsequent appointment to perform a DD examination of an injured employee.
42. On May 23, 2018, Dr. Garrett's office staff stated that Dr. Garrett was not responding to any claims and a new DD had to be appointed.

**FAILURE TO TIMELY RESPOND TO A DWC REQUEST FOR CLARIFICATION**

43. On November 1, 2018, Dr. Garrett received a letter of clarification (LOC) from DWC.
44. Dr. Garrett was required to respond to the LOC within five working days after receipt of the LOC, or by November 8, 2018.
45. Dr. Garrett failed to respond to the LOC, and a new DD had to be appointed.

**ASSESSMENT OF SANCTION**

46. Failure to attend a DD exam without good cause unnecessarily delays the resolution of medical disputes and, therefore, the injured employee's ability to obtain necessary treatment in a timely manner.
47. The examinations and reports provided by a DD have significant consequences on workers' compensation claims, the benefits of injured employees, and the Texas workers' compensation system itself. DWC relies on DDs to comply with the rules in order to provide a fair and accessible dispute resolution process.
48. 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.
49. In assessing the sanction for this case, DWC found no factors set forth in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e) to be mitigating and the following factors 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.
50. Dr. Garrett acknowledges that DWC and Dr. Garrett 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).
51. Dr. Garrett 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 28 TEX. ADMIN. CODE § 127.210, the commissioner may revoke or suspend a DD's certification as a DD or otherwise sanction a DD for noncompliance with DWC rules.
5. Pursuant to TEX. LAB. CODE § 415.003(5) and 28 TEX. ADMIN. CODE § 127.210(a)(15), the commissioner may sanction a DD for violations of applicable statutes or rules while serving as a DD.
6. Pursuant to 28 TEX. ADMIN. CODE § 127.10(d), (e), and (f), a DD who determines MMI, IR, RTW, or other issues is required to file a DD report with DWC.
7. Dr. Garrett violated TEX. LAB. CODE § 415.003(5) and 28 TEX. ADMIN. CODE § 127.210(a)(15) each time he failed to file a DD report with DWC.
8. Pursuant to 28 TEX. ADMIN. CODE § 127.210(a)(3), the commissioner may sanction a DD for any refusal to accept or perform a DWC offered appointment or ordered appointment that relates to a claim on which the doctor has previously performed an examination.
9. Dr. Garrett violated TEX. LAB. CODE § 415.003(5) and 28 TEX. ADMIN. CODE § 127.210(a)(3) and (15) each time he refused to accept an appointment from DWC.
10. Pursuant to 28 TEX. ADMIN. CODE § 127.210(a)(9), the commissioner may sanction a DD for failure to timely respond to a request for clarification from DWC regarding an examination or any other information request by DWC.
11. Dr. Garrett violated TEX. LAB. CODE § 415.003(5) and 28 TEX. ADMIN. CODE § 127.210(a)(9) and (15) when he failed to respond to a LOC.




**ORDER**

It is ORDERED that Andrew Michael Garrett, D.C. is hereby forever 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. Dr. Garrett's removal from the Texas workers' compensation system's designated doctor list shall be permanent, of indefinite duration, and without a right for reconsideration at any point in the future by DWC.


It is further ORDERED that Andrew Michael Garrett, D.C. is hereby removed from the Texas workers' compensation system as a health care provider; shall no longer participate as a health care provider in the treatment or examination – including certification of maximum medical improvement, impairment rating, or return to work – of any injured employee in the Texas workers' compensation system, in or out of network; and shall not receive as a health care provider direct or indirect remuneration, in any form, from the treatment or examination of any injured employee in the Texas workers' compensation system. This Order does not apply to emergency cases as defined by 28 TEX. ADMIN. CODE § 133.2. Dr. Garrett's removal from the Texas workers' compensation system as a health care provider shall last for four years from the date of this Order.

It is further ORDERED that Andrew Michael Garrett, D.C. pay an administrative penalty of \$2,500 within 30 days from the date of this Order.

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

  
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Cassie Brown *NEW*  
Commissioner of Workers' Compensation

Approved as to Form and Content:

  
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Glen Imes  
Staff Attorney, DWC Enforcement  
Texas Department of Insurance



