

No. 3357

OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF WORKERS' COMPENSATION

Date: JUN 20 2014

Subject Considered:

EBERHARD R. SAMLOWSKI, M.D.
2301 County Road 1218
Cleburne, TX 76033

CONSENT ORDER
TDI ENFORCEMENT FILE NO. 6038

General remarks and official action taken:

The commissioner of workers' compensation considers whether disciplinary action should be taken against Eberhard R. Samlowski, M.D. (Dr. Samlowski).

WAIVER

Dr. Samlowski acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Dr. Samlowski 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. Samlowski is a physician licensed by the State of Texas on June 17, 1992. He holds Texas Medical Board license no. J1380.
2. Dr. Samlowski is a health care provider in the Texas workers' compensation system.
3. Dr. Samlowski was not classified in the 2007, 2009, 2011, or 2013 Performance Based Oversight assessments.
4. Dr. Samlowski was initially certified in the Texas workers' compensation system as a designated doctor (DD) on September 15, 2011. His DD certification expired on September 15, 2013, and has not been renewed. Dr. Samlowski was initially certified to assign Maximum Medical Improvement (MMI) dates and Impairment Ratings (IR) on September 25, 2010, and his MMI/IR certification is effective until September 25, 2014.

5. Dr. Samlowski received two warning letters, one in 2012 and one in 2013, for not timely filing required DD forms and narrative reports.
6. Pursuant to 28 TEX. ADMIN. CODE § 130.1(d)(2), a Report of Medical Evaluation (DWC Form-69) shall be filed with the division no later than the seventh working day after the later of: (A) the date of the DD examination; or (B) the date all required medical information has been received by the DD.
7. Between May and July 2013, Dr. Samlowski did not timely file required DD forms and narrative reports in four cases, as follows:

Case 1

- a. On May 11, 2013, Dr. Samlowski completed a DD examination, and the DWC Form-69 and narrative report were due to be filed no later than the seventh working day after the DD examination was completed, or by May 21, 2013.
- b. On July 3, 2013, the division received the required DWC Form-69 and narrative report by facsimile, which was filed 43 days late.

Case 2

- a. On June 24, 2013, Dr. Samlowski completed a DD examination, and the DWC Form-69 and narrative report were due to be filed no later than the seventh working day after the DD examination was completed, or by July 3, 2013.
- b. On July 15, 2013, the division received the required DWC Form-69 and narrative report by facsimile, which was filed 12 days late.

Case 3

- a. On April 26, 2013, Dr. Samlowski completed a DD examination that included a return to work issue, and the DWC Form-69 and narrative report, and Work Status Report (DWC Form-73), were due to be filed within seven working days, and no later than the seventh working day, after the DD examination was completed, or by May 7, 2013.
- b. On July 16, 2013, the division received the required DWC Form-69 and narrative report, and the DWC Form-73, by facsimile, which were both filed 70 days late.

Case 4

- a. On May 13, 2013, Dr. Samlowski completed a DD examination that included a return to work issue, as well as other issues or questions, and the DWC Form-69 and narrative report, the DWC Form-73, and the DD Examination Data Report (DWC Form-68), were due to be filed within seven working days, and no later than the seventh working day, after the DD examination was completed, or by May 22, 2013.
 - b. On July 1, 2013, the division received the required DWC Form-69 and narrative report, the DWC Form-73, and the DWC Form-68, by facsimile, which were all filed 40 days late.
8. Mitigating Factors: During the period between May and July 2013, coincidental factors that contributed to Dr. Samlowski's omissions to timely file DD forms and narrative reports included: (1) the rapidly-failing health, and subsequent death, of a parent who resided out-of-state; and (2) multiple severe tornados that struck the Cleburne, Texas, area on May 16, 2013, that resulted in heavy damage and power outages that continued to the end of the month.

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. §§ 401.011, 401.021, 401.025, 402.001, 402.00111, 402.00114, 402.00116, 402.00128, 415.021, 415.0215, 415.003, and 415.0035; 28 TEX. ADMIN. CODE §§ 127.10, 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. § 402.00128(b)(7), and 28 TEX. ADMIN. CODE § 180.26(h).
3. Pursuant to TEX. LAB. CODE ANN. § 415.0215(a), and 28 TEX. ADMIN. CODE § 180.26(a), the division may impose sanctions against any person regulated by the division under the Texas Workers' Compensation Act, and any system participant if that system participant commits an administrative violation.
4. Pursuant to TEX. LAB. CODE ANN. § 415.0035(b), a health care provider commits an administrative violation if that person: (1) fails or refuses to timely file required reports or records.

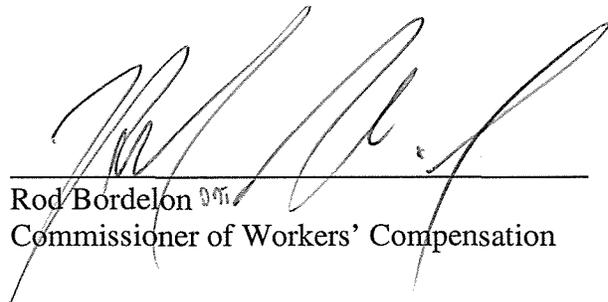
5. Pursuant to 28 TEX. ADMIN. CODE § 127.10(d), a DD, who performs an evaluation for a MMI date and/or an IR, shall file a DWC Form-69 as required by 28 TEX. ADMIN. CODE § 130.1, which also includes the requirement of an attached narrative report.
6. Pursuant to 28 TEX. ADMIN. CODE § 130.1(d)(2), a DWC Form-69 shall be filed with the division no later than the seventh working day after the later of: (A) the date of the DD examination; or (B) the date all required medical information has been received by the DD.
7. Dr. Samlowski violated TEX. LAB. CODE ANN. § 415.0035(b)(1), and 28 TEX. ADMIN. CODE §§ 127.10(d) and 130.1(d)(2)(A) or (B), when he failed to timely file DWC Form-69 forms and narrative reports following DD examinations in four cases.
8. Pursuant to 28 TEX. ADMIN. CODE § 127.10(e), a DD, who examines an injured employee on any question related to return to work, is required to file a DWC Form-73 within seven working days of the date of the DD examination.
9. Dr. Samlowski violated TEX. LAB. CODE ANN. § 415.0035(b)(1), and 28 TEX. ADMIN. CODE § 127.10(e), when he failed to timely file a DWC Form-73 form following a DD examination with a return to work question in two cases.
10. Pursuant to 28 TEX. ADMIN. CODE § 127.10(f), a DD, who examines an injured employee on any question or issue other than one listed in subsections (d) and (e) of this section, is required to file a DWC Form-68 within seven working days of the date of the DD examination.
11. Dr. Samlowski violated TEX. LAB. CODE ANN. § 415.0035(b)(1), and 28 TEX. ADMIN. CODE § 127.10(f), when he failed to timely file a DWC Form-68 form following a DD examination that had an additional issue or question in one case.
12. Pursuant to TEX. LAB. CODE ANN. § 415.003, a health care provider commits an administrative violation if the person: (5) violates a commissioner rule; or (6) fails to comply with a provision of the Texas Workers' Compensation Act.
13. 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 the Texas Workers' Compensation Act, or a rule, order, or decision of the commissioner. In addition to any sanction, administrative penalty, or other remedy authorized by the Texas Workers' Compensation Act, the commissioner 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.

- 14. Dr. Samlowski committed an administrative violation under TEX. LAB. CODE ANN. §§ 415.003(5) or (6), and 415.021(a), each time he violated, or failed or refused to comply with, a commissioner rule or a provision of the Texas Workers' Compensation Act.

ORDER

It is agreed and ORDERED that as of the effective date of this consent order, Eberhard R. Samlowski, M.D., will never re-apply for the DD certification in the Texas workers' compensation system.

It is further agreed and ORDERED that, if Eberhard R. Samlowski, M.D., should re-apply for the DD certification, the division will not grant the DD certification, and his re-application will constitute a violation of this consent order.



Rod Bordelon DM
Commissioner of Workers' Compensation

Approved as to Form and Content:



Joseph M. Tabaracci
Staff Attorney, Compliance Division
Texas Department of Insurance

