

OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF WORKERS' COMPENSATION

Date: OCT 08 2019

Subject Considered:

ANTHONY J. DEL GENOVESE, D.C.
909 South Airport Drive
Weslaco, Texas 78596-6651

CONSENT ORDER
TDI-DWC ENFORCEMENT FILE NO. 16675

General remarks and official action taken:

The commissioner of workers' compensation (commissioner) considers whether disciplinary action should be taken against Anthony J. Del Genovese, D.C. (Dr. Del Genovese).

WAIVER

Dr. Del Genovese acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Dr. Del Genovese 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. Del Genovese holds Texas Doctor of Chiropractic License No. 09835, which was issued by the Texas Board of Chiropractic Examiners on May 27, 2004.
2. Dr. Del Genovese is a designated doctor (DD) in the Texas workers' compensation system. Dr. Del Genovese is certified to rate maximum medical improvement (MMI) and assign impairment ratings (IRs). Dr. Del Genovese was first certified as a DD, to rate MMI, and to assign IRs on June 10, 2004. Dr. Del Genovese's certifications as a DD, to rate MMI, and to assign IRs will expire on September 21, 2020.
3. Dr. Del Genovese was not selected to be tiered in the 2007, 2009, 2011, 2013, 2015, or 2017 Performance Based Oversight (PBO) assessments.

MEDICAL QUALITY REVIEW NO. 18-43-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 a complaint based medical quality review (MQR No. 18-43-DD) of four cases in which Dr. Del Genovese conducted DD examinations of injured employees. The purpose of MQR No. 18-43-DD was to evaluate the medical necessity and appropriateness of additional testing or a referral by Dr. Del Genovese to resolve a question at issue in each examination.

SUBMITTING UNNECESSARY REFERRALS/ORDERING OR PERFORMING UNNECESSARY TESTING

6. Dr. Del Genovese submitted unnecessary referrals to other health care providers or ordered or performed unnecessary testing of an injured employee as part of a DD examination in 100% of cases examined or both (4 out of 4).

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

7. Dr. Del Genovese failed to sufficiently explain how he determined the answer to each question within a reasonable degree of medical probability in 100% of cases examined (4 out of 4).
8. Dr. Del Genovese 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 (4 out of 4).

ASSESSMENT OF SANCTION

9. Submitting unnecessary referrals to other health care providers or ordering or performing unnecessary testing of an injured employee or both as part of a DD examination imposes extraneous medical costs on the Texas workers' compensation system and unreasonably delays the completion of the DD's report.
10. 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.
11. 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.
12. 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 evidence of heightened awareness of the legal duty to comply with the Texas Workers' Compensation Act and DWC rules.
13. 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 mitigating: 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; and other matters that justice may require, including but not limited to the promptness and earnestness of actions to prevent future violations.
14. Dr. Del Genovese acknowledges that DWC and Dr. Del Genovese 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).
15. Dr. Del Genovese 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, and 415.021.
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 the Texas Labor Code, the commissioner 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. Del Genovese violated TEX. LAB. CODE § 415.003(3) and (5) each time he submitted unnecessary referrals to other health care providers or ordered or performed unnecessary testing of an injured employee as part of his DD examination or both.
10. 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.
11. Dr. Del Genovese 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 degree of medical probability.
12. 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.
13. Dr. Del Genovese 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.

2019 6103

ORDER

Anthony J. Del Genovese, D.C. is ORDERED:

1. To pay an administrative penalty of \$1,000 within 30 days from the date of this Order;
2. To complete 10 hours each of the "*Special Imaging for the Chiropractor Patient*" CL#2123 and the "*Orthopedic and Neurologic Examination*" online continuing education courses from The University of Western States within 90 days from the date of this Order. Confirmation of the attendance and completion of the workshop must be provided to DWC within 14 days of completion.

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

Dr. Del Genovese must mail certificates of completion to the Texas Department of Insurance, Attn: Mary Hughes, DWC Enforcement, 7551 Metro Center Drive, Suite #100, MS-11, Austin, Texas 78744.



Cassie Brown
Commissioner of Workers' Compensation

Approved as to Form and Content:



Andrés Durá
Staff Attorney, DWC Enforcement
Texas Department of Insurance

2019 6103

AFFIDAVIT

STATE OF TEXAS §
 §
COUNTY OF _____ §

Before me, the undersigned authority, personally appeared the affiant, Anthony J. Del Genovese, D.C., who being by me duly sworn, deposed as follows:

“My name is Anthony J. Del Genovese, 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 waive rights provided by the Texas Labor Code and other applicable law and acknowledge the jurisdiction of the Texas commissioner of workers' compensation.

I knowingly and voluntarily enter into this consent order and agree with and consent to the issuance and service of this consent order.”

Anthony J. Del Genovese
Affiant

SWORN TO AND SUBSCRIBED before me on August 30th, 2019.

(NOTARY SEAL)

Rosa M. Rodriguez
Signature of Notary Public

Rosa Rodriguez
Printed Name of Notary Public

01.27.2023
Commission Expiration Date

