

No. DWC - 12 - 0173

OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF WORKERS' COMPENSATION

Date: OCT 17 2012

Subject Considered:

WAYNE A. SOIGNIER, M.D.
400 S. Old Highway 81, Bldg. A1
Kyle, Texas 78640-5420

CONSENT ORDER
TDI ENFORCEMENT FILE NO. 238

General remarks and official action taken:

The commissioner of workers' compensation considers whether disciplinary action should be taken against Wayne A. Soignier, M.D. (Dr. Soignier).

WAIVER

Dr. Soignier acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Dr. Soignier 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. Soignier holds Texas Medical License No. F9665, which was issued on February 22, 1986.
2. Dr. Soignier was classified as a "high tier" performer under the 2007 and 2011 Performance Based Oversight (PBO) assessments.
3. Dr. Soignier was not tiered under the 2009 PBO assessment.
4. Dr. Soignier is a designated doctor in the Texas workers' compensation system and was last certified to assign impairment ratings on May 17, 2011.
5. Pursuant to TEX. LAB. CODE ANN. § 408.0041(a)–(b), a designated doctor is appointed to recommend a resolution of a dispute as to the medical condition of an injured employee and may be called upon to perform medical examinations to

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resolve any question about the impairment caused by the compensable injury, the attainment of maximum medical improvement (MMI), the extent of the employee's compensable injury, whether the injured employee's disability is a direct result of the work-related injury, the ability of the employee to return to work (RTW), and other similar issues.

6. Pursuant to TEX. LAB. CODE ANN. §§ 408.123 and 408.124 and 28 TEX. ADMIN. CODE § 130.1(c)(2), a doctor who certifies that an injured employee has reached MMI shall assign an impairment rating (IR) in accordance with the appropriate edition of the American Medical Association Guides to the Evaluation of Permanent Impairment (AMA Guides).
7. In accordance with TEX. LAB. CODE ANN. § 413.002(b), the division is charged with monitoring health care providers who serve as designated doctors under Chapter 408, including evaluating compliance with the Texas Labor Code and the rules adopted by the commissioner relating to medical policies, fee guidelines, treatment guidelines, return-to-work guidelines, and impairment ratings; and the quality and timeliness of decisions made under TEX. LAB. CODE ANN. §§ 408.0041, 408.122, 408.151, or 413.031.

Medical Quality Review #10-IR-003

8. The division's medical advisor (whose duties are defined under TEX. LAB. CODE ANN. § 413.0511) and medical quality review panel (MGRP) (as established pursuant to TEX. LAB. CODE ANN. § 413.0512) conducted a medical quality review of seven cases in which Dr. Soignier conducted designated doctor examinations. The findings contained in Medical Quality Review #10-IR-003, which was previously forwarded to Dr. Soignier, form the evidentiary basis for this action.
9. In three cases, Dr. Soignier failed to follow the AMA Guides resulting in inaccurate Impairment Ratings.
10. In three cases, Dr. Soignier assigned IR that lacked sufficient justification or documentation.
11. In five cases, Dr. Soignier made MMI determinations or assigned MMI dates that lacked sufficient justification or documentation.
12. In three cases, Dr. Soignier improperly determined MMI as the date of the exam.
13. In two cases, Dr. Soignier failed to provide justification or support for his RTW determinations.

14. In two cases, Dr. Soignier failed to properly address the issue presented for review.
15. In all seven cases, Dr. Soignier misrepresented and/or omitted pertinent facts in his medical evaluations and narrative reports.
16. In all seven cases, Dr. Soignier submitted inaccurate or inappropriate reports due to insufficient examination and analysis of medical records.

Failure to Timely File the DWC Form-69

17. In accordance with 28 TEX. ADMIN. CODE § 130.1(d)(2), the Report of Medical Evaluation (DWC Form-69) must be filed with the division, employee, employee's representative, and the insurance carrier no later than the seventh working day after the later of the date of the certifying examination or the receipt of all required medical information.
18. Dr. Soignier failed to timely file the DWC Form-69 in eight instances.

Failure to Timely Respond to a Request for Letter of Clarification (LOC)

19. In accordance with 28 TEX. ADMIN. CODE § 127.20, designated doctors are required to respond to requests for letters of clarification within five working days, unless an additional examination is required, in which case the doctor is required to respond within seven working days of the examination.
20. Dr. Soignier failed to timely respond to a request for LOC in one instance.

Failure to Perform a Division Ordered Designated Doctor Examination

21. In accordance with TEX. LAB. CODE ANN. § 408.0041(a), at the request of an insurance carrier or an employee, or on the commissioner's own order, the commissioner may order a medical examination to resolve any question about: (1) the impairment caused by the compensable injury; (2) the attainment of maximum medical improvement; (3) the extent of the employee's compensable injury; (4) whether the injured employee's disability is a direct result of the work-related injury; (5) the ability of the employee to return to work; or (6) issues similar to those described by Subdivisions (1)-(5).
22. In accordance with TEX. LAB. CODE ANN. § 408.0041(b), a medical examination requested under Subsection (a) shall be performed by the next available doctor on the division's list of designated doctors whose credentials are appropriate for the issue in question and the injured employee's medical condition as determined by commissioner rule.

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23. In accordance with 28 TEX. ADMIN. CODE § 127.5(e), if the designated doctor is unable to perform the exam as scheduled, the designated doctor may reschedule the examination within 21 days of the original examination. If the examination cannot be rescheduled within 21 days, the designated doctor shall notify the division and the division shall select a new designated doctor.
24. Dr. Soignier failed to perform a division ordered designated doctor examination in one instance. Furthermore, instead of notifying the division that he was not available to perform the examination, Dr. Soignier had another physician perform the examination.

Failure to Timely Reschedule a Designated Doctor Exam

25. Pursuant to 28 TEX. ADMIN. CODE § 127.5(e), the designated doctor's office and the employee shall contact each other if there exists a scheduling conflict for the designated doctor appointment. The designated doctor or the employee who has the scheduling conflict must make the contact at least 24 hours prior to the appointment. The 24-hour requirement will be waived in an emergency situation. The rescheduled examination shall be set to occur within 21 days of the originally scheduled examination. Within 24 hours of rescheduling, the designated doctor shall contact the division's field office and the insurance carrier with the time and date of the rescheduled examination. If the examination cannot be rescheduled within 21 days, the designated doctor shall notify the division and the division shall select a new designated doctor.
26. Dr. Soignier failed to timely reschedule a designated doctor exam in four instances.

Improper Change of Exam Location

27. In accordance with 28 TEX. ADMIN. CODE § 127.5(b), the examination address indicated on the order may not be changed by any party or by agreement without good cause and the approval of the division.
28. Dr. Soignier improperly changed the exam location in two instances.

CONCLUSIONS OF LAW

Based upon the foregoing findings of fact, 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, 402.001, 402.00111, 402.00114, 402.00116, 402.00128, 402.072, 408.0041, 408.0231, 408.123, 408.124, 408.125, 408.1225, 413.002, 413.044, 413.0511, 413.0512, 414.002,

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414.003, 415.003, 415.021, and 415.023; and 28 TEX. ADMIN. CODE §§ 126.7, 127.5, 127.20, 130.1, 130.3, 180.21, 180.22, 180.23, 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. § 408.0231(e), the commissioner shall act on a recommendation by the medical advisor and, after notice and the opportunity for a hearing, may impose sanctions on a doctor.
4. In accordance with TEX. LAB. CODE ANN. § 408.0231(c), the criteria for recommending or imposing sanctions on a doctor may include anything the commissioner considers relevant, including findings that the doctor's diagnoses or treatments are substantially different from those the commissioner finds to be fair or reasonable; a suspension or other relevant practice restriction of the doctor's license by an appropriate licensing authority; or for the professional failure to practice medicine or provide health care in an acceptable manner consistent with the public health, safety, and welfare.
5. Pursuant to TEX. LAB. CODE ANN. § 408.0231 and 28 TEX. ADMIN. CODE § 180.26, the commissioner of workers' compensation may impose a range of sanctions against any person regulated by the division, which includes the authority to place restrictions on appointments or reviews, and mandatory participation in training classes or other courses as established or certified by the division.
6. Pursuant to TEX. LAB. CODE ANN. § 413.044(a)(1), in addition to or in lieu of an administrative penalty under TEX. LAB. CODE ANN. § 415.021 or a sanction imposed under TEX. LAB. CODE ANN. § 415.023, the commissioner may impose sanctions against a person who serves as a designated doctor under Chapter 408 who is determined by the division to be out of compliance with this subtitle or with rules adopted by the commissioner relating to medical policies, fee guidelines, and Impairment Ratings or the quality of decisions made under TEX. LAB. CODE ANN. §§ 408.0041 or 408.122.
7. In addition to the grounds for issuing other sanctions against a doctor under 28 TEX. ADMIN. CODE § 180.26, the commissioner shall delete or suspend a doctor from the designated doctor list (DDL), or otherwise sanction a designated doctor for noncompliance with requirements of 28 TEX. ADMIN. CODE § 180.21 or if any of the following conduct occurs:
 - a. misrepresentation or omission of pertinent facts in medical evaluation and narrative reports;

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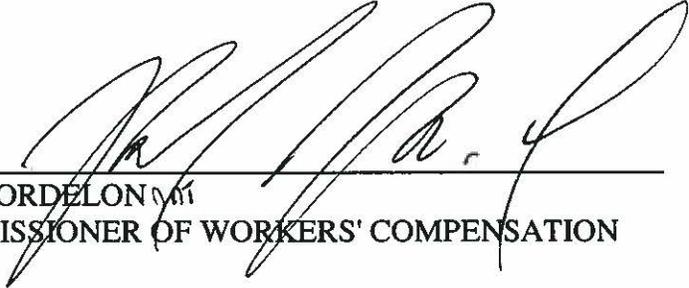
- b. submission of inaccurate or inappropriate reports as a pattern of practice due to insufficient examination and analysis of medical records; or
 - c. other violation of applicable statutes or rules while serving as a designated doctor.
8. Pursuant to TEX. LAB. CODE ANN. § 415.003(5)&(6), a health care provider, like a designated doctor, commits an administrative violation each time he or she fails to comply with a provision of this subtitle or if he or she violates a commissioner's rule.
9. Dr. Soignier violated TEX. LAB. CODE ANN. §§ 408.123 and 408.124, and 28 TEX. ADMIN. CODE § 130.1(c)(2) each time he failed to assign IR in accordance with the AMA Guides.
10. Dr. Soignier violated 28 TEX. ADMIN. CODE §§ 130.1(b) and 180.21(m) each time he assigned IR that lacked sufficient justification or documentation; made MMI determination or assigned MMI dates that lacked sufficient justification or documentation; or failed to provide justification or support for his RTW determinations.
11. Dr. Soignier violated 28 TEX. ADMIN. CODE § 180.21(m) each time he failed to properly address the issue presented for review.
12. Dr. Soignier violated 28 TEX. ADMIN. CODE § 180.21(m) each time he misrepresented or omitted pertinent facts in his medical evaluations and narrative reports.
13. Dr. Soignier violated 28 TEX. ADMIN. CODE § 180.21(m) each time he submitted inaccurate or inappropriate reports due to insufficient examination and analysis of medical records.
14. Dr. Soignier violated 28 TEX. ADMIN. CODE § 130.1(d)(2) each time he failed to timely file the Report of Medical Evaluation (DWC Form-69).
15. Dr. Soignier violated 28 TEX. ADMIN. CODE § 127.2 each time he failed to timely respond to an LOC request.
16. Dr. Soignier violated TEX. LAB. CODE ANN. § 408.0041 and 28 TEX. ADMIN. CODE § 127.5(e) each time he failed to perform a division ordered designated doctor examination.

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17. Dr. Soignier violated 28 TEX. ADMIN. CODE § 127.5(e) each time he failed to timely reschedule a designated doctor examination or notify the division of his inability to timely reschedule an ordered examination.
18. Dr. Soignier violated 28 TEX. ADMIN. CODE § 127.5(b) each time he improperly changed the exam location.

ORDER

Wayne A. Soignier, M.D. is ORDERED to be immediately and permanently removed from the division's designated doctor list.



ROD BORDELON
COMMISSIONER OF WORKERS' COMPENSATION

Approved as to form and content:



Terra Thomas
Staff Attorney, Compliance Division
Texas Department of Insurance

