

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

Date: MAY 13 2019

**Subject Considered:**

**KIVA L DAVIS, DC**  
9801 Westheimer Road, Suite 800  
Houston, Texas 77042-3979

**CONSENT ORDER**  
TDI ENFORCEMENT FILE NO. 16500

**General remarks and official action taken:**

The commissioner of workers' compensation (commissioner) considers whether disciplinary action should be taken against Kiva L Davis, DC (Dr. Davis).

**WAIVER**

Dr. Davis acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Dr. Davis 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. Davis holds Texas Board of Chiropractic Examiners License No. 12045, which was issued by the Texas Board of Chiropractic Examiners on April 6, 2012.
2. Dr. Davis is a designated doctor (DD) in the Texas workers' compensation system. Dr. Davis is certified to rate maximum medical improvement (MMI) and to assign impairment ratings (IRs). Dr. Davis was first certified as a DD, to rate MMI, and to assign IRs on November 23, 2015. Dr. Davis's certification as a DD, to rate MMI, and to assign IRs will expire on November 24, 2019. Dr. Davis has identified Genesis Medical Management Solutions as her administrative services company since January 21, 2015.
3. Dr. Davis was not selected to be tiered in the 2007, 2009, 2011, 2013, 2015, or 2017 Performance Based Oversight (PBO) assessments.

**MEDICAL QUALITY REVIEW NO. 18-23-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 an audit-based medical quality review (MQR No. 18-23-DD) of 10 cases in which Dr. Davis conducted DD examinations of injured employees. The purpose of the audit was to evaluate the medical necessity and appropriateness of additional testing or referrals by Dr. Davis to resolve a question at issue in each examination.

**SUBMITTING UNNECESSARY REFERRALS/ORDERING OR PERFORMING UNNECESSARY TESTING**

6. Dr. Davis 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 90% of cases examined (9 out of 10).

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

7. Dr. Davis failed to explain in the DD report why additional testing or a referral was necessary to resolve the question at issue in 90% of cases examined (9 out of 10).

**SUBMISSION OF INACCURATE OR INAPPROPRIATE REPORTS DUE TO INAPPROPRIATE OR UNREASONABLE EVALUATIONS**

8. Dr. Davis submitted an inaccurate or inappropriate DD report due to insufficient medical history or physical examination and analysis of medical records in 90% of cases examined (9 out of 10).
9. Dr. Davis inappropriately or unreasonably failed to consider DWC adopted guidelines in 10% of the cases where MMI was an issue (1 out of 10).
10. Dr. Davis inappropriately or unreasonably failed to consider the return to work guidelines (RTW) in 30% of the cases where RTW was an issue (3 out of 10).

**ASSESSMENT OF SANCTION**

11. Submitting unnecessary referrals to other health care providers or ordering or performing unnecessary testing of an injured employee as part of a DD examination imposes unnecessary medical costs on the workers' compensation system and unreasonably delays the completion of the DD's report in the form and manner required by DWC.

12. Failure to file a DD report in the form and manner required by DWC increases the likelihood of disputes and encumbers the ability of system participants to resolve them promptly and fairly.
13. 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), including but not limited to:
  - 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.
14. In assessing the sanction in 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 violations, 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 a negative impact on the delivery of benefits to an injured employee.
15. In assessing the sanction in 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 history and extent of previous administrative violations; and evidence of heightened awareness of the legal duty to comply with the Texas Workers' Compensation Act and DWC rules.
16. Dr. Davis acknowledges that DWC and Dr. Davis have communicated regarding the relevant statutes and rules violated; the facts establishing that violations occurred; and the appropriateness of the proposed sanction, including how DWC considered applicable factors set forth in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e).
17. Dr. Davis 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, and 414.002.
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), 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 TEX. LAB. CODE § 408.0231(f)(4), the commissioner may impose sanctions against a doctor who commits an administrative violation, including deletion from the DD list.
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 DWC 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. Davis violated TEX. LAB. CODE §§ 415.003(3) and (5), and 28 Tex. Admin. Code §§ 127.210(a)(5) and (6) each time she submitted unnecessary referrals to other health care providers and ordered or performed unnecessary testing of an injured employee as part of her DD examination.
10. 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.
11. Dr. Davis violated TEX. LAB. CODE § 415.003(5) each time she filed a DD report that failed to explain why the testing or referral was necessary to resolve a question at issue in the examination.

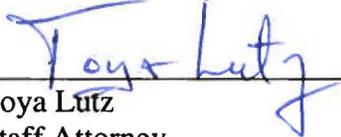
12. Pursuant to 28 TEX. ADMIN. CODE § 127.210(a)(7), the commissioner may sanction a DD for submission of inaccurate or inappropriate reports due to insufficient medical history or physical examination and analysis of medical records.
13. Pursuant to TEX. LAB. CODE § 408.0231(c)(3), the commissioner may sanction a DD based on evidence from DWC's medical records that a DD's charges, fees, diagnoses, treatments, evaluations, or IRs are substantially different from those the commissioner finds to be fair and reasonable.
14. Dr. Davis violated 28 TEX. ADMIN. CODE § 127.210(a)(7) and TEX. LAB. CODE §§ 408.0231(c)(3) and 415.003(5) each time she submitted an inaccurate or inappropriate DD report that inappropriately or unreasonably addressed the question or questions she was ordered to answer, including whether the injured employee had reached MMI or what was the injured employee's IR.
15. Pursuant to 28 TEX. ADMIN. CODE § 127.200(7), the DD is required to apply the appropriate edition of the American Medical Association Guides to the Evaluation of Permanent Impairment and DWC adopted RTW guidelines and consider division adopted treatment guidelines or other evidence-based medicine when appropriate.
16. Dr. Davis violated TEX. LAB. CODE § 415.003(5) and 28 TEX. ADMIN. CODE § 127.200(7) each time she failed to apply the appropriate edition of the American Medical Association Guides to the Evaluation of Permanent Impairment and division-adopted RTW guidelines and consider division adopted treatment guidelines or other evidence-based medicine when appropriate.

**ORDER**

It is ORDERED that, Kiva L Davis, DC, shall be 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 for two years from the date of this Order.

  
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Cassie Brown *ncw*  
Commissioner of Workers' Compensation

Approved as to Form and Content:

  
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Toya Lutz  
Staff Attorney  
DWC Enforcement  
Compliance and Investigations

