

No. 4588

OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF WORKERS' COMPENSATION

Date: JUL 19 2016

Subject Considered:

TERRY DOUGLAS MADSEN, M.D.
3009 E. Renner Rd., Suite 100
Richardson, TX 75082-3572

CONSENT ORDER
TDI ENFORCEMENT FILE NO. 10243

General remarks and official action taken:

The commissioner of workers' compensation considers whether disciplinary action should be taken against Terry Douglas Madsen, M.D. (Dr. Madsen).

WAIVER

Dr. Madsen acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Dr. Madsen 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. Madsen is a health care provider who provides medical treatment and care to injured employees in the Texas workers' compensation system. Dr. Madsen holds Texas Medical License No. L8816, which was issued on June 4, 2004.
2. Dr. Madsen was not selected to be tiered in the 2007, 2009, 2011, 2013, or the 2015 Performance Based Oversight assessments.

Medical Quality Review No. 15-28 HCP

3. The division, as authorized by TEX. LAB. CODE ANN. § 414.002, monitors system participants to determine compliance with the Texas Workers' Compensation Act and rules promulgated by the commissioner of workers' compensation.

4. The division's Medical Advisor, whose duties are defined in TEX. LAB. CODE ANN. § 413.0511, and Medical Quality Review Panel (MQRP), as established pursuant to TEX. LAB. CODE ANN. § 413.0512, conducted a medical quality review of seven cases where Dr. Madsen treated injured employees.
5. All of the injured employees were treated by Dr. Madsen between 2012 and 2014.
6. In total, the medical records show Dr. Madsen evaluated and treated the seven injured employees during at least 120 separate office visits.
7. Dr. Madsen ordered or referred the injured employees for Manual Muscle Testing (MMTs) at least 73 times out of the 120 office visits.
8. Dr. Madsen referred the injured employees to obtain MMTs on the same day as the office visits.
9. Dr. Madsen submitted separate bills and signed the Health Insurance Claim Forms 1500 as the rendering physician in approximately 42 out of the 73 MMTs that were performed. In each instance where Dr. Madsen signed the Health Insurance Claim Forms 1500 as the rendering provider, either Premier Muscle Testing or Orthovan is listed as the billing entity.
10. Dr. Madsen had an ownership interest in both Premier Muscle Testing and Orthovan prior to the dissolutions of those business entities. Dr. Madsen failed to ever disclose to the division his financial interests in Premier Muscle Testing and Orthovan.
11. Dr. Madsen failed to submit appropriate medical bills for American Medical Association Current Procedural Terminology (CPT) manual muscle test codes 95831 (hand muscle testing) and 95832 (limb muscle testing).
12. The CPT codes 95831 and 95832 are physician services as defined by the 2012, 2013, and 2014 Medicare Physician Fee Schedules. These services cannot be split into a technical and professional component.
13. Dr. Madsen billed for CPT codes 95831 and 95832 as the rendering physician in 42 of the 73 MMTs that were performed; however, the medical records included with the medical bills do not support that Dr. Madsen performed the services. The medical records show that a technician performed the MMTs.
14. Dr. Madsen neither admits nor denies that for billing purposes, MMTs cannot be split into a technical and professional component. Dr. Madsen neither admits nor

denies that he submitted inappropriate medical bills but agrees to settle the matter to avoid further litigation costs.

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. §§ 401.021, 402.001, 402.00111, 402.00114, 402.00116, 402.00128, 413.002, 413.041, 413.0511, 413.0512, 414.002, 415.003, 415.0035, 415.021, and 415.0215; 28 TEX. ADMIN. CODE §§ 134.203, 180.24, 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. § 413.002, the division shall monitor health care providers to ensure the compliance with rules adopted by the commissioner relating to health care, including medical policies and fee guidelines.
4. Pursuant to TEX. LAB. CODE ANN. § 415.0215 and 28 TEX. ADMIN. CODE § 180.26, a sanction the commissioner may impose includes monitoring and mandatory participation in training classes.
5. Pursuant to TEX. LAB. CODE ANN. § 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.
6. Pursuant to TEX. LAB. CODE ANN. § 415.003(5) and (6), 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 Labor Code.
7. Pursuant to TEX. LAB. CODE ANN. §§ 413.041(a) and 415.0035(b)(2) and 28 TEX. ADMIN. CODE § 180.24, each health care practitioner shall annually disclose to the division the identity of any health care provider or facility in which the health care practitioner, or the health care provider that employs the health care practitioner, has a financial interest.
8. Dr. Madsen violated TEX. LAB. CODE ANN. §§ 413.041(a) and 415.0035(b)(2) and 28 TEX. ADMIN. CODE § 180.24, each time he referred injured employees to a health care facility in which he had an undisclosed financial interest.

9. Pursuant to TEX. LAB. CODE ANN. § 415.003(4) and (5), a health care provider commits an administrative violation if the person violates the division's fee and treatment guidelines or a commissioner rule.
10. Pursuant to 28 TEX. ADMIN. CODE § 134.203(b)(1), for coding, billing, reporting, and reimbursement of professional medical services, Texas workers' compensation system participants shall apply Medicare payment policies, including its coding, billing, correct coding initiatives edits, modifiers, and other payment policies in effect on the date a service is provided with any additions or exceptions in the rules.
11. Pursuant to TEX. LAB. CODE ANN. § 415.003(4) and (5) and 28 TEX. ADMIN. CODE § 134.203(b)(1), Dr. Madsen committed an administrative violation each time he violated the division's fee guidelines by submitting a bill for hand or limb muscle testing he did not perform, and which was not in accordance with the applicable Medicare billing policies.

ORDER

Terry Douglas Madsen, M.D. is ORDERED:

1. To cease and desist from referring, ordering, performing, or billing for computerized or manual muscle testing or range of motion testing as a separate billable service within the Division of Workers' Compensation system. Billing data for computerized or manual muscle testing and range of motion testing will be monitored by the division;
2. To attend and complete the KSTAR Medical Record Documentation course within 180 days from the date of this Order. Confirmation of the attendance and completion of the course must be provided to the division within 14 days of completion;
3. To complete four hours of Continuing Medical Education (CME) in the area of Ethics within 90 days from the date of this Order, either in person or online. Confirmation of the attendance and completion of the CME must be provided to the division within 14 days of completion; and
4. To pay an administrative penalty of \$15,000 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." Dr. Madsen 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. Madsen must mail the certificates of completion for the KSTAR Medical Record Documentation course and the CMEs to the Texas Department of Insurance, Attn: Mary Hughes, DWC Enforcement, 7551 Metro Center Drive, Suite 100, MS-11, Austin, Texas 78744.



W. Ryan Brannan *WCB*
Commissioner of Workers' Compensation

Approved as to Form and Content:



Victoria McDaniel-Sonnier
Staff Attorney, DWC Enforcement
Texas Department of Insurance

