

No. **DWC-10-0005**

OFFICIAL ORDER
of the
COMMISSIONER OF WORKERS' COMPENSATION
of the
STATE OF TEXAS
AUSTIN, TEXAS

Date: **FEB 16 2010**

Subject Considered:

PAUL D. LIFLAND, M.D.
1000 Crown Ridge Blvd., Suite A
Eagle Pass, TX 78852

CONSENT ORDER
DISCIPLINARY ACTION
TDI ENFORCEMENT FILE NO. 55335

General remarks and official action taken:

On this date came on for consideration by the Commissioner of Workers' Compensation, the matter of whether disciplinary action should be taken against Dr. Paul D. Lifland, M.D. ("Dr. Lifland"). The Texas Department of Insurance, Division of Workers' Compensation Staff ("Division Staff") alleges that Dr. Lifland violated the Texas Labor Code and that such conduct constitutes grounds for the imposition of sanctions pursuant to TEX. LAB. CODE ANN., ch. 415.

Division Staff and Dr. Lifland announce that they have compromised and settled all claims and agree to the entry of this Consent Order. The parties request that the Commissioner of Workers' Compensation informally dispose of this case pursuant to TEX. GOV'T CODE ANN. § 2001.056, TEX. LAB. CODE ANN. §§ 401.021 and 402.00128(b)(7), and 28 TEX. ADMIN. CODE § 180.8(h).

JURISDICTION

The Commissioner of Workers' Compensation has jurisdiction over this matter pursuant to TEX. LAB. CODE ANN. §§ 402.001, 402.00111, 402.00114, 402.00116, 402.00128, 402.072, 408.0041, 408.123, 414.002, 414.003, 415.003, 415.021, and 415.023; and 28 TEX. ADMIN. CODE §§ 126.7, 130.1, 130.3, 130.6, 180.1, 180.2, 180.3, 180.7, 180.8, 180.10, 180.11; 180.12, 180.21, 180.22, 180.23, and 180.26; and TEX. GOV'T CODE ANN. §§ 2001.051-2001.178.

WAIVER

Dr. Lifland acknowledges the existence of certain rights provided by the Texas Labor Code and other applicable law, including the right to receive a written notice of possible administrative violations as provided for by TEX. LAB. CODE ANN. § 415.032, the right to request a hearing as provided for by TEX. LAB. CODE ANN. § 415.034, and the right to judicial review of the decision as provided for by TEX. LAB. CODE ANN. § 415.035. Dr. Lifland waives these rights, as well as any other procedural rights that might otherwise apply, in consideration of the entry of this Consent Order.

FINDINGS OF FACT

The Commissioner of Workers' Compensation makes the following findings of fact:

System Participant – Certifying Doctor

1. In accordance with 28 TEX. ADMIN. CODE § 130.1(a)(1), only an authorized doctor may certify Maximum Medical Improvement (“MMI”), determine whether there is permanent impairment, and assign an impairment rating.
2. In accordance with 28 TEX. ADMIN. CODE § 130.1(a)(1)(A)(i)-(iii), doctors serving in the following roles may be authorized: the treating doctors (or a doctor to whom the treating doctor has referred the employee for evaluation of maximum medical improvement and/or permanent whole body impairment in the place of the treating doctor), a designated doctor, and a required medical examination doctor selected by the carrier and approved by the commission after a designated doctor has performed a maximum medical improvement and/or permanent whole body impairment exam.
3. In accordance with 28 TEX. ADMIN. CODE § 130.1(a)(1)(B)(i)-(ii), a doctor serving in one of the roles described in subsection 28 TEX. ADMIN. CODE § 130.1(a)(1)(A), is authorized as follows: a doctor whom the commission has certified to assign impairment ratings or otherwise given specific permission by exception to, is authorized to determine whether an injured employee has permanent impairment, assign an impairment rating, and certify MMI; and a doctor whom the commission has not certified to assign impairment ratings or otherwise given specific permission by exception to is only authorized to determine whether an injured employee has permanent impairment and, in the event that the injured employee has no impairment, certify MMI.
4. In accordance with 28 TEX. ADMIN. CODE § 130.1(a)(3), a doctor who is authorized under this subsection to certify MMI, determine whether permanent impairment exists, and assign an impairment rating and who does, shall be referred to as the “certifying doctor.”

5. Dr. Lifland is a certified doctor.
6. Dr. Lifland was last certified to assign impairment ratings on January 27, 2009.

Certification of Maximum Medical Improvement and Evaluation of Impairment Ratings

7. In accordance with TEX. LAB. CODE ANN. § 408.123(a), after an employee has been certified by a doctor as having reached maximum medical improvement, the certifying doctor shall evaluate the condition of the employee and assign an impairment rating.
8. In accordance with TEX. LAB. CODE ANN. § 408.123(b), a certifying doctor shall issue a written report certifying that maximum medical improvement has been reached, stating the employee's impairment rating, and provide it to the Division, the employee, and the insurance carrier.
9. In accordance with 28 TEX. ADMIN. CODE § 130.1(d)(1), certification of MMI and assignment of an impairment rating requires submission of a Report of Medical Evaluation, also known as the DWC Form-69.
10. In accordance with 28 TEX. ADMIN. CODE § 130.1(d)(2), the 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 of the medical information required by 28 TEX. ADMIN. CODE § 130.1.
11. Pursuant to 28 TEX. ADMIN. CODE § 130.1(d)(3), the DWC Form-69 must be filed with the carrier via facsimile or electronic transmission.
12. In accordance with 28 TEX. ADMIN. CODE § 130.1(e)(1)-(3), the certifying doctor shall maintain the original copy of the Report of Medical Evaluation and narrative as well as documentation of the date of the examination; the date any medical records necessary to make the certification of maximum medical improvement were received, and from whom the medical records were received; and the date, addressees, and means of delivery that reports required under 28 TEX. ADMIN. CODE § 130.1 were transmitted or mailed by the certifying doctor.

System Participant – Designated Doctor

13. A "designated doctor", as defined by TEX. LAB. CODE ANN. § 401.011(15), means a doctor appointed by mutual agreement of the parties or by the Division of Workers' Compensation ("Division") to recommend a resolution of a dispute as to the medical condition of an injured employee.

14. In accordance with 28 TEX. ADMIN. CODE § 180.21(b), in order to serve as a designated doctor, a doctor must be on the Designated Doctor List.
15. In accordance with 28 TEX. ADMIN. CODE § 180.21(d)(1)-(4), to be on the DDL on or after January 1, 2007, the doctor shall at a minimum: meet the registration requirements, or the exceptions thereto, of 28 TEX. ADMIN. CODE § 180.21(c)(1) or, upon expiration or waiver of the ADL in accordance with TEX. LAB. CODE ANN. § 408.023(k), comply with all successor requirements, including but not limited to financial disclosure under TEX. LAB. CODE ANN. §413.041; have filed an application to be on the DDL, which must be renewed biennially; have successfully completed Division-approved training and examination on the assignment of impairment ratings using the currently adopted edition of the American Medical Association Guides, medical causation, extent of injury, functional restoration, return to work, and other disability management topics; and have had an active practice for at least three years during the doctor's career.
16. Dr. Lifland is a designated doctor.
17. Dr. Lifland was last approved to be on the Division's Designated Doctor List on January 27, 2009.

Designated Doctor's Role and Responsibilities

18. In accordance with TEX. LAB. CODE ANN. § 408.0041(a), a designated doctor may be called upon to perform medical examinations, as requested by an insurance carrier, employee, or the Division, to 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, and other similar issues.
19. In accordance with 28 TEX. ADMIN. CODE § 126.7(n), a designated doctor must file a report, as required by 28 TEX. ADMIN. CODE §§ 130.1 and 130.3, when the designated doctor determines that an employee has reached MMI, when the designated doctor assigns an impairment rating, or when the designated doctor determines that the employee has not reached MMI. The report must be sent to the insurance carrier, the employee, the employee's representative, if any, the treating doctor, and the Division.
20. In accordance with 28 TEX. ADMIN. CODE § 126.7(q), the designated doctor shall maintain accurate records, including the employee records, analysis (including supporting information), and narratives provided by the insurance carrier and treating doctor, to reflect: the date and time of any designated doctor appointments scheduled with an employee; the circumstances regarding a cancellation, no-show or other situation where the examination did not occur as

initially scheduled or rescheduled; the date of the examination; the date medical records were received from the treating doctor or any other person or organization; the date the medical evaluation report, including the narrative report described in subsection 28 TEX. ADMIN. CODE § 126.7 (n), was submitted to all parties; the name of all referral health care providers, date of appointments and reason for referral by the designated doctor; and the date the doctor contacted the Division for assistance in obtaining medical records from the insurance carrier or treating doctor.

21. In accordance with 28 TEX. ADMIN. CODE § 126.7(u), the Division may contact the designated doctor if it determines that clarification is necessary to resolve an issue regarding the designated doctor's report. The designated doctor shall respond to the letter of clarification request within five days of receipt.

Complaints Filed Against Dr. Lifland

Failure to File DWC Form-69 in a Timely Manner

22. Dr. Lifland filed the DWC Form-69 with the Division on April 11, 2008, or 28 days past the required deadline. (Injured employee, R.L.; Carrier number 12368774; DWC claim number XXXX7281).
 - a. Dr. Lifland performed a designated doctor examination of the injured employee (R.L.) on March 5, 2008.
 - b. Dr. Lifland had all necessary records prior to the date of the examination.
 - c. The examination was deemed complete on March 5, 2008.
 - d. Dr. Lifland was required to file a Report of Medical Evaluation (DWC Form-69) with the Division, the employee and the carrier no later than the seventh working day after the certifying examination.
 - e. The DWC Form-69 was required to be sent to the injured employee, the carrier and the Division by March 14, 2008.
23. Dr. Lifland failed to file the DWC Form-69 with the Division, which was due on March 25, 2008. (Injured employee, P.L.; Carrier number 06W052350767; DWC claim number XXXX3172).
 - a. Dr. Lifland performed a designated doctor examination of the injured employee (P.L.) on March 14, 2008.
 - b. Dr. Lifland had all necessary records prior to the date of the examination.

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- c. The examination was deemed complete on March 14, 2008.
 - d. Dr. Lifland was required to file a Report of Medical Evaluation (DWC Form-69) with the Division, the employee and the carrier no later than the seventh working day after the certifying examination.
 - e. The DWC Form-69 was required to be sent to the injured employee, the carrier and the Division by March 25, 2008.
 - f. The Division assigned a new designated doctor since Dr. Lifland failed to file the DWC Form-69.
24. Dr. Lifland failed to file the DWC Form-69 with the Division, which was due on March 25, 2008. (Injured employee, T.B.; DWC claim number XXXX1076).
- a. Dr. Lifland performed a designated doctor examination of the injured employee (T.B.) on March 14, 2008.
 - b. Dr. Lifland had all necessary records prior to the date of the examination.
 - c. The examination was deemed complete on March 14, 2008.
 - d. Dr. Lifland was required to file a Report of Medical Evaluation (DWC Form-69) with the Division, the employee and the carrier no later than the seventh working day after the certifying examination.
 - e. The DWC Form-69 was required to be sent to the injured employee, the carrier and the Division by March 25, 2008.
 - f. The Division assigned a new designated doctor since Dr. Lifland failed to file the DWC Form-69.
25. Dr. Lifland filed the DWC Form-69 with the Division on May 20, 2008, or 25 days past the required deadline. (Injured employee, A.V.; Carrier number E2197653; DWC claim number XXXX8179).
- a. Dr. Lifland performed a designated doctor examination of the injured employee (A.V.) on April 16, 2008.
 - b. Dr. Lifland had all necessary records prior to the date of the examination.
 - c. The examination was deemed complete on April 16, 2008.

- d. Dr. Lifland was required to file a Report of Medical Evaluation (DWC Form-69) with the Division, the employee and the carrier no later than the seventh working day after the certifying examination.
 - e. The DWC Form-69 was required to be sent to the injured employee, the carrier and the Division by April 25, 2008.
26. Dr. Lifland failed to file the DWC Form-69 with the Division, which was due on May 9, 2008. (Injured employee, J.S.; Carrier number 949891196; DWC claim number XXXX9753).
- a. Dr. Lifland performed a designated doctor examination of the injured employee (J.S.) on April 30, 2008.
 - b. Dr. Lifland had all necessary records prior to the date of the examination.
 - c. The examination was deemed complete on April 30, 2008.
 - d. Dr. Lifland was required to file a Report of Medical Evaluation (DWC Form-69) with the Division, the employee and the carrier no later than the seventh working day after the certifying examination.
 - e. The DWC Form-69 was required to be sent to the injured employee, the carrier and the Division by May 9, 2008.
 - f. The Division assigned a new designated doctor since Dr. Lifland failed to file the DWC Form-69.
27. Dr. Lifland failed to file the DWC Form-69 with the Division, which was due on May 9, 2008. (Injured employee, E.R.; Carrier number WC2462596; DWC claim number XXXX5570).
- a. Dr. Lifland performed a designated doctor examination of the injured employee (E.R.) on April 30, 2008.
 - b. Dr. Lifland had all necessary records prior to the date of the examination.
 - c. The examination was deemed complete on April 30, 2008.
 - d. Dr. Lifland was required to file a Report of Medical Evaluation (DWC Form-69) with the Division, the employee and the carrier no later than the seventh working day after the certifying examination.
 - e. The DWC Form-69 was required to be sent to the injured employee, the carrier and the Division by May 9, 2008.

- f. The Division assigned a new designated doctor since Dr. Lifland failed to file the DWC Form-69.
28. Dr. Lifland failed to file the DWC Form-69 with the Division, which was due on June 20, 2008. (Injured employee, A.J.; Carrier number 99H0000484428; DWC claim number XXXX8718).
- a. Dr. Lifland performed a designated doctor examination of the injured employee (A.J.) on June 11, 2008.
 - b. Dr. Lifland had all necessary records prior to the date of the examination.
 - c. The examination was deemed complete on June 11, 2008.
 - d. Dr. Lifland was required to file a Report of Medical Evaluation (DWC Form-69) with the Division, the employee and the carrier no later than the seventh working day after the certifying examination.
 - e. The DWC Form-69 was required to be sent to the injured employee, the carrier and the Division by June 20, 2008.
 - f. The Division assigned a new designated doctor since Dr. Lifland failed to file the DWC Form-69.
29. Dr. Lifland failed to file the DWC Form-69 with the Division, which was due on June 20, 2008. (Injured employee, V.G.; Carrier number 99H0000480736; DWC claim number XXXX0368).
- a. Dr. Lifland performed a designated doctor examination of the injured employee (V.G.) on June 11, 2008.
 - b. Dr. Lifland had all necessary records prior to the date of the examination.
 - c. The examination was deemed complete on June 11, 2008.
 - d. Dr. Lifland was required to file a Report of Medical Evaluation (DWC Form-69) with the Division, the employee and the carrier no later than the seventh working day after the certifying examination.
 - e. The DWC Form-69 was required to be sent to the injured employee, the carrier and the Division by June 20, 2008.
 - f. The Division assigned a new designated doctor since Dr. Lifland failed to file the DWC Form-69.

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30. Dr. Lifland failed to file the DWC Form-69 with the Division, which was due on June 20, 2008. (Injured employee, R.C.; Carrier number T110700130831; DWC claim number XXXX0352).
 - a. Dr. Lifland performed a designated doctor examination of the injured employee (R.C.) on June 11, 2008.
 - b. Dr. Lifland had all necessary records prior to the date of the examination.
 - c. The examination was deemed complete on June 11, 2008.
 - d. Dr. Lifland was required to file a Report of Medical Evaluation (DWC Form-69) with the Division, the employee and the carrier no later than the seventh working day after the certifying examination.
 - e. The DWC Form-69 was required to be sent to the injured employee, the carrier and the Division by June 20, 2008.
 - f. The Division assigned a new designated doctor since Dr. Lifland failed to file the DWC Form-69.

31. Dr. Lifland failed to file the DWC Form-69 with the Division, which was due on June 20, 2008. (Injured employee, J.H.; Carrier number 912094; DWC claim number XXXX1242).
 - a. Dr. Lifland performed a designated doctor examination of the injured employee (J.H.) on June 11, 2008.
 - b. Dr. Lifland had all necessary records prior to the date of the examination.
 - c. The examination was deemed complete on June 11, 2008.
 - d. Dr. Lifland was required to file a Report of Medical Evaluation (DWC Form-69) with the Division, the employee and the carrier no later than the seventh working day after the certifying examination.
 - e. The DWC Form-69 was required to be sent to the injured employee, the carrier and the Division by June 20, 2008.
 - f. The Division assigned a new designated doctor since Dr. Lifland failed to file the DWC Form-69.

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32. Dr. Lifland failed to file the DWC Form-69 with the Division, which was due on June 20, 2008. (Injured employee, G.G.; Carrier number 99312907470089; DWC claim number XXXX8263).
 - a. Dr. Lifland performed a designated doctor examination of the injured employee (G.G.) on June 11, 2008.
 - b. Dr. Lifland had all necessary records prior to the date of the examination.
 - c. The examination was deemed complete on June 11, 2008.
 - d. Dr. Lifland was required to file a Report of Medical Evaluation (DWC Form-69) with the Division, the employee and the carrier no later than the seventh working day after the certifying examination.
 - e. The DWC Form-69 was required to be sent to the injured employee, the carrier and the Division by June 20, 2008.
 - f. The Division assigned a new designated doctor since Dr. Lifland failed to file the DWC Form-69.

33. Dr. Lifland failed to file the DWC Form-69 with the Division, which was due on May 6, 2008. (Injured employee, J.R.P.; Carrier number 99H0000491426; DWC claim number XXXX4877).
 - a. Dr. Lifland performed a designated doctor examination of the injured employee (J.R.P.) on April 25, 2008.
 - b. Dr. Lifland had all necessary records prior to the date of the examination.
 - c. The examination was deemed complete on April 25, 2008.
 - d. Dr. Lifland was required to file a Report of Medical Evaluation (DWC Form-69) with the Division, the employee and the carrier no later than the seventh working day after the certifying examination.
 - e. The DWC Form-69 was required to be sent to the injured employee, the carrier and the Division by May 6, 2008.
 - f. The Division assigned a new designated doctor since Dr. Lifland failed to file the DWC Form-69.

34. Dr. Lifland filed the DWC Form-69 with the Division on December 8, 2008, or 104 days past the required deadline. (Injured employee, E.A.; Carrier number 023050000411280001; DWC claim number XXXX2760).

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- a. Dr. Lifland performed a designated doctor examination of the injured employee (E.A.) on August 15, 2008.
 - b. Dr. Lifland had all necessary records prior to the date of the examination.
 - c. The examination was deemed complete on August 15, 2008.
 - d. Dr. Lifland was required to file a Report of Medical Evaluation (DWC Form-69) with the Division, the employee and the carrier no later than the seventh working day after the certifying examination.
 - e. The DWC Form-69 was required to be sent to the injured employee, the carrier and the Division by August 26, 2008.
35. Dr. Lifland filed the DWC Form-69 with the Division on December 4, 2008, or 79 days past the required deadline. (Injured employee, A.G.; Carrier number 478CBA8L8543; DWC claim number XXXX9414).
- a. Dr. Lifland performed a designated doctor examination of the injured employee (A.G.) on September 5, 2008.
 - b. Dr. Lifland had all necessary records prior to the date of the examination.
 - c. The examination was deemed complete on September 5, 2008.
 - d. Dr. Lifland was required to file a Report of Medical Evaluation (DWC Form-69) with the Division, the employee and the carrier no later than the seventh working day after the certifying examination.
 - e. The DWC Form-69 was required to be sent to the injured employee, the carrier and the Division by September 16, 2008.
36. Dr. Lifland filed the DWC Form-69 with the Division on December 3, 2008, or 78 days past the required deadline. (Injured employee, S.M.; Carrier number 9625412; DWC claim number XXXX0598).
- a. Dr. Lifland performed a designated doctor examination of the injured employee (S.M.) on September 5, 2008.
 - b. Dr. Lifland had all necessary records prior to the date of the examination.
 - c. The examination was deemed complete on September 5, 2008.

- d. Dr. Lifland was required to file a Report of Medical Evaluation (DWC Form-69) with the Division, the employee and the carrier no later than the seventh working day after the certifying examination.
 - e. The DWC Form-69 was required to be sent to the injured employee, the carrier and the Division by September 16, 2008.
37. Dr. Lifland filed the DWC Form-69 with the Division on December 12, 2008, or 42 days past the required deadline. (Injured employee, C.M.; Carrier number 010993; DWC claim number XXXX0459).
- a. Dr. Lifland performed a designated doctor examination of the injured employee (C.M.) on October 22, 2008.
 - b. Dr. Lifland had all necessary records prior to the date of the examination.
 - c. The examination was deemed complete on October 22, 2008.
 - d. Dr. Lifland was required to file a Report of Medical Evaluation (DWC Form-69) with the Division, the employee and the carrier no later than the seventh working day after the certifying examination.
 - e. The DWC Form-69 was required to be sent to the injured employee, the carrier and the Division by October 31, 2008.
38. Dr. Lifland filed the DWC Form-69 with the Division on December 12, 2008, or 42 days past the required deadline. (Injured employee, J.S.; Carrier number C290C7345679; DWC claim number XXXX6104).
- a. Dr. Lifland performed a designated doctor examination of the injured employee (J.S.) on October 22, 2008.
 - b. Dr. Lifland had all necessary records prior to the date of the examination.
 - c. The examination was deemed complete on October 22, 2008.
 - d. Dr. Lifland was required to file a Report of Medical Evaluation (DWC Form-69) with the Division, the employee and the carrier no later than the seventh working day after the certifying examination.
 - e. The DWC Form-69 was required to be sent to the injured employee, the carrier and the Division by October 31, 2008.

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39. Dr. Lifland filed the DWC Form-69 with the Division on December 12, 2008, or 42 days past the required deadline. (Injured employee, M.O.; Carrier number 1157152X1; DWC claim number XXXX9340).
 - a. Dr. Lifland performed a designated doctor examination of the injured employee (M.O.) on October 22, 2008.
 - b. Dr. Lifland had all necessary records prior to the date of the examination.
 - c. The examination was deemed complete on October 22, 2008.
 - d. Dr. Lifland was required to file a Report of Medical Evaluation (DWC Form-69) with the Division, the employee and the carrier no later than the seventh working day after the certifying examination.
 - e. The DWC Form-69 was required to be sent to the injured employee, the carrier and the Division by October 31, 2008.

40. Dr. Lifland failed to file the DWC Form-69 with the Division, which was due on November 7, 2008. (Injured employee, J.A.; Carrier number 2230141615; DWC claim number XXXX8720).
 - a. Dr. Lifland performed a designated doctor examination of the injured employee (J.A.) on October 29, 2008.
 - b. Dr. Lifland had all necessary records prior to the date of the examination.
 - c. The examination was deemed complete on October 29, 2008.
 - d. Dr. Lifland was required to file a Report of Medical Evaluation (DWC Form-69) with the Division, the employee and the carrier no later than the seventh working day after the certifying examination.
 - e. The DWC Form-69 was required to be sent to the injured employee, the carrier and the Division by November 7, 2008.
 - f. The Division assigned a new designated doctor since Dr. Lifland failed to file the DWC Form-69.

41. Dr. Lifland filed the DWC Form-69 with the Division on April 8, 2008, or 152 days past the required deadline. (Injured employee, R.P.; Carrier number 99J0000537018; DWC claim number XXXX2945).

- a. Dr. Lifland performed a designated doctor examination of the injured employee (R.P.) on October 29, 2008.
- b. Dr. Lifland had all necessary records prior to the date of the examination.
- c. The examination was deemed complete on October 29, 2008.
- d. Dr. Lifland was required to file a Report of Medical Evaluation (DWC Form-69) with the Division, the employee and the carrier no later than the seventh working day after the certifying examination.
- e. The DWC Form-69 was required to be sent to the injured employee, the carrier and the Division by November 7, 2008.

Failure to file Letters of Clarification ("LOC") in a Timely Manner

42. Dr. Lifland filed the LOC on June 6, 2008, or two days past the June 4, 2008 deadline. (Injured employee, A.G.; Carrier number C190C741740X; DWC claim number XXXX6147).
 - a. The Division faxed Dr. Lifland an LOC request for injured employee A.G. on May 30, 2008.
 - b. The LOC request is deemed received on May 30, 2008.
 - c. Dr. Lifland was required to respond to the LOC request by June 4, 2008, five days after receipt.
43. Dr. Lifland filed the LOC on August 27, 2008, or 30 days past the July 28, 2008 deadline. (Injured employee, L.L.; Carrier number 20060010095111; DWC claim number XXXX4695).
 - a. The Division mailed Dr. Lifland an LOC request for injured employee L.L. on July 17, 2008.
 - b. The LOC request is deemed received on July 22, 2008, five days after the mail date per 28 TEX. ADMIN. CODE § 102.5(d).
 - c. Dr. Lifland was required to file the LOC by July 28, 2008, five days after receipt.
44. Dr. Lifland filed the LOC on March 12, 2009, or 31 days past the February 9, 2009 deadline. (Injured employee, B.B.; Carrier number WC2460343; DWC claim number XXXX4225).

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- a. The Division faxed Dr. Lifland an LOC request for injured employee B.B. on February 2, 2009.
 - b. The LOC request is deemed received on February 2, 2009.
 - c. Dr. Lifland was required to file the LOC by February 9, 2009, five days after receipt.
45. Dr. Lifland filed the LOC on March 27, 2009, or 32 days past the February 23, 2009 deadline. (Injured employee, M.O.; Carrier number 1157152X1; DWC claim number XXXX9340).
- a. The Division mailed Dr. Lifland an LOC request for injured employee M.O. on February 13, 2009.
 - b. The LOC request is deemed received on February 18, 2009, five days after the mail date per 28 TEX. ADMIN. CODE § 102.5(d).
 - c. Dr. Lifland was required to file the LOC by February 23, 2009, five days after receipt.
46. Dr. Lifland filed the LOC on April 8, 2009, or 78 days past the January 20, 2009 deadline. (Injured employee, J.S.; Carrier number C290C7345679; DWC claim number XXXX6104).
- a. The Division faxed Dr. Lifland an LOC request for injured employee J.S. on January 15, 2009.
 - b. The LOC request is deemed received on January 15, 2009.
 - c. Dr. Lifland was required to file the LOC by January 20, 2009, five days after receipt.
47. Dr. Lifland failed to respond to a LOC request. (Injured employee, Y.G.; Carrier number 009267; DWC claim number XXXX6558).
- a. The Division mailed Dr. Lifland an LOC request for injured employee Y.G. on October 23, 2008.
 - b. The LOC request is deemed received on October 28, 2008, five days after the mail date per 28 TEX. ADMIN. CODE § 102.5(d).
 - c. Dr. Lifland was required to file the LOC by November 3, 2008, five days after receipt.

Aggravating Factors

Harm to the System

48. Pursuant to TEX. LAB. CODE ANN. § 408.121 (a)–(b), an employee's entitlement to impairment income benefits begins on the day after the date the employee reaches MMI and the insurance carrier must begin paying impairment income benefits not later than the fifth day after receiving the doctor's report certifying MMI.
49. Pursuant to TEX. LAB. CODE ANN. § 408.122, a claimant may not recover impairment income benefits unless there is evidence of impairment based on objective clinical or laboratory finding, which a designated doctor may determine if disputed.
50. In eleven separate instances Dr. Lifland failed to file the DWC Form-69 thereby requiring the Division to assign new designated doctors to the injured employees.
51. The payments of impairment income benefits to injured employees may have been delayed as a result of Dr. Lifland's inability to submit the DWC Form-69 and LOC in a timely manner.
52. Dr. Lifland's failure to timely file the DWC Form-69 and LOC's delayed the dispute resolution process.

Warning Letters

53. The Division has issued three warning letters to Dr. Lifland for failing to timely file the DWC Form-69.
 - a. On or about June 30, 2008, the Division issued one warning letter to Dr. Lifland for failing to file DWC Form-69s timely.
 - b. On or about September 2, 2008, the Division issued one warning letter to Dr. Lifland for failing to file DWC Form-69s timely.
 - c. On or about November 24, 2008, the Division issued one warning letter to Dr. Lifland for failing to file DWC Form-69s timely.

Mitigating Factors

54. Prior to February 2009, Dr. Lifland employed a scheduling company, Southwest Medical Evaluators, to perform the administrative functions of his designated doctor duties.

55. Dr. Lifland acknowledges that although he employed scheduling companies to perform the administrative functions required of a designated doctor, it is his ultimate responsibility to ensure compliance with the Act and Rules.
56. Dr. Lifland terminated his relationship with Southwest Medical Evaluators in or around January 2009. Thereafter, Dr. Lifland hired an administrative assistant and began performing the administrative functions himself.
57. Dr. Lifland agrees to implement a compliance plan to prevent future administrative violations.
 - a. Prior to this consent order, Dr. Lifland reduced his location matrix to Maverick and Bee Counties and is no longer practicing as a traveling designated doctor. Therefore, by reducing the counties he services, he will be able to complete and submit the required forms in a timely manner.
 - b. A designated staff member will be responsible for the submission of reports to the Division.
 - c. Hard copies of all documentation and forms will be maintained and dated with a submission date.
 - d. Reports will be faxed and mailed to the appropriate staff member at the Division and the receipt of such report will be verified.
 - e. Staff will update their supervisor on a weekly basis regarding the Division's request for reports and other related issues.
58. Dr. Lifland agrees to the suspension from the Designated Doctor List for initial designated doctor appointments for 30 months. During this time, the Division will not assign, nor shall he accept, any initial designated doctor appointments.
59. During this 30 month suspension, Dr. Lifland agrees, upon request of the Division, he will accept appointments and timely conduct subsequent examinations of injured workers for which he was previously assigned to as a designated doctor for each county on his location matrix as of the date of this order. He will timely respond to all Division requests for letters of clarification.
60. Dr. Lifland agrees that he will not modify his appointment location matrix for 30 months without prior approval from the Office of the Medical Advisor. Therefore, for 30 months there will be no additions or deletions of counties unless approved by the Office of the Medical Advisor.

61. Dr. Lifland agrees to file the DWC Form-69 in a timely manner as required by 28 TEX. ADMIN. CODE §§ 126.7 and 130.1.
62. Dr. Lifland agrees to file the letter of clarification in a timely manner as required by 28 TEX. ADMIN. CODE §§ 126.7.

Other Considerations

63. This Consent Order, and the actions required hereby, is entered into in the nature of compromise and settlement and in order to avoid the time, trouble, and expense to the Division and to Dr. Lifland of resolving this dispute through administrative or judicial proceedings.

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. §§ 402.001, 402.00111, 402.00114, 402.00116, 402.00128, 402.072, 408.0041, 408.123, 414.002, 414.003, 415.003, 415.021, and 415.023; and 28 TEX. ADMIN. CODE §§ 126.7, 130.1, 130.3, 130.6, 180.1, 180.2, 180.3, 180.7, 180.8, 180.10, 180.11; 180.12, 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 § 180.8(h).
3. Dr. Lifland has knowingly and voluntarily waived all procedural rights to which he may have been entitled regarding the entry of this Order, including, but not limited to, written notice of possible administrative violations, a hearing, and judicial review.
4. In accordance with 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.
5. In accordance with TEX. LAB. CODE ANN. § 415.023(a), a person who commits an administrative violation under Section 415.001, 415.002, 415.003, or 415.0035 as a matter of practice is subject to an applicable rule adopted under TEX. LAB. CODE ANN. § 415.023(b) in addition to the penalty assessed for the violation.

6. In accordance with 28 TEX. ADMIN. CODE § 180.21(m), in addition to the grounds for deletion or suspension from the ADL or 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, or otherwise sanction a designated doctor for noncompliance with the requirements of this section or if any of the following conduct occurs:
 - a. failure to timely respond as a pattern of practice to a request for clarification from the Division regarding an examination.
 - b. any of the factors listed in 28 TEX. ADMIN. CODE § 180.21(i) that would allow for denial of admission to the DDL;
 - c. other violation of applicable statutes or rules while serving as a designated doctor.
7. In accordance with 28 TEX. ADMIN. CODE § 180.26(d)(1), the Medical Advisor may recommend a sanction against a doctor or a carrier or the deletion or suspension of a doctor from the ADL if they violate the Statute, Rules, or a commission decision or order or agreement.
8. In accordance with TEX. LAB. CODE ANN. § 415.003(5), a health care provider, like a designated doctor, commits an administrative violation each time he or she violates a commissioner's rule.
 - a. Dr. Lifland violated 28 TEX. ADMIN. CODE § 126.7(u) each time he failed to file the letter of clarification in a timely manner.
 - b. Dr. Lifland violated 28 TEX. ADMIN. CODE § 130.1(d)(2) each time he failed to file the DWC Form-69 in a timely manner.
9. Dr. Lifland failed to timely file the DWC Form-69 in 20 separate instances.
10. Dr. Lifland failed to timely file the Letter of Clarification in six separate instances.

Based on the Findings of Fact and Conclusions of Law above, the Commissioner of Workers' Compensation has determined that the appropriate disposition is the imposition of the following sanctions and full compliance with the terms of this Order.

IT IS THEREFORE ORDERED that Dr. Paul D. Lifland shall pay, and is hereby directed to pay, on or before thirty (30) days from the date of this Order, an administrative penalty in the amount of ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500.00). Payment must be paid by cashier's check or money order made payable to the "State of Texas" and transmitted to the Texas Department of Insurance,

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Dr. Paul D. Lifland, December 16, 2009

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Enforcement Division-DWC, Division 3721, MC-9999, P.O. Box 149104, Austin, Texas 78714-9104.

IT IS ALSO ORDERED that thirty (30) days from the date of this Order, Dr. Paul D. Lifland shall be suspended from the designated doctor list for a period of thirty (30) months. During this thirty (30) month suspension, Dr. Paul D. Lifland will not be assigned nor shall he accept initial designated doctor appointments by the Division.

IT IS ALSO ORDERED that during this thirty (30) month suspension, Dr. Paul D. Lifland, upon request of the Division, he will accept appointments and timely conduct subsequent examinations of injured workers for which he was previously assigned to as a designated doctor for each county on his location matrix as of the date of this order. He will timely respond to all Division requests for letters of clarification.

IT IS ALSO ORDERED that Dr. Paul D. Lifland will not modify his appointment location matrix for thirty (30) months without prior approval from the Office of the Medical Advisor. Therefore, for thirty (30) months there will be no additions or deletions of counties unless approved by the Office of the Medical Advisor.

IT IS ALSO ORDERED that Dr. Paul D. Lifland will comply with the terms of the compliance plan established in this Order.

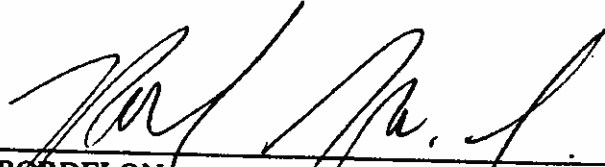
IT IS ALSO ORDERED that Dr. Paul D. Lifland shall file the DWC Form-69 in a timely manner as required by 28 TEX. ADMIN. CODE §§ 126.7 and 130.1.

IT IS ALSO ORDERED that Dr. Paul D. Lifland shall file the letter of clarification in a timely manner as required by 28 TEX. ADMIN. CODE § 126.7.

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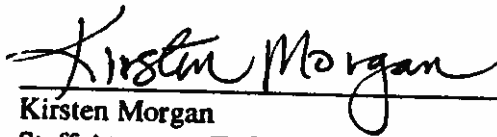
COMMISSIONER'S ORDER
Dr. Paul D. Lifland, December 16, 2009
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IT IS ALSO ORDERED by the Commissioner of Workers' Compensation that should Dr. Paul D. Lifland fail to comply with the terms of this Order that Dr. Paul D. Lifland will have committed an additional administrative violation and his failure to comply with the terms of this Order may subject Dr. Paul D. Lifland to further penalties as authorized by the Texas Labor Code, which, pursuant to TEX. LAB. CODE ANN. § 415.021(a), includes the right to impose an administrative penalty of up to \$25,000 per day per occurrence.



ROD BORDELON
COMMISSIONER OF WORKERS' COMPENSATION

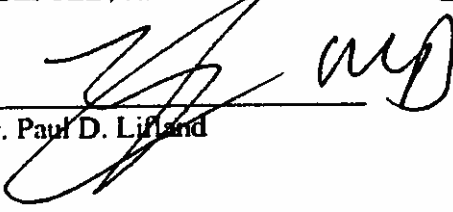
FOR THE STAFF:



Kirsten Morgan
Staff Attorney, Enforcement Division
Texas Department of Insurance

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AGREED, ACCEPTED, and EXECUTED on this 11th day of Jan, ~~2009~~ 2010 by:

Signature of Dr. Paul D. Lifland PL

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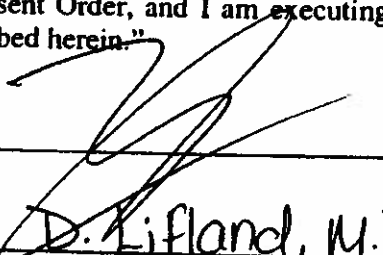
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STATE OF TEXAS §
 §
COUNTY OF Maverick §

BEFORE ME, Christina Perez, a notary public in and for the State of Texas, on this day personally appeared Paul D. Lifland, M.D. known to me or proven to me through Texas Driver License to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, who being by me duly sworn, deposed as follows:

1. "My name is Dr. Paul D. Lifland. I am of sound mind, capable of making this statement, and personally acquainted with the facts stated in this Consent Order.
2. I have read the terms and conditions contained within this Consent Order, and I have knowingly and voluntarily entered into it.
3. I consent to the issuance and service of this Consent Order, and I am executing the same for the purposes and consideration described herein."



 Signature
Paul D. Lifland, M.D.

 Typed/Printed Name

Given under my hand and seal of office this 11th day of January, 2010 CP.

(NOTARY SEAL)



Christina Perez

 Notary Public, State of Texas
 My commission expires: 10-8-13