

No. DWC - 11 - 0031

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

Date: MAR 03 2011

Subject Considered:

CARL CUTHBERT DAVIS, JR., M.D.

4009 Tennyson
Houston, TX 77005

CONSENT ORDER
DISCIPLINARY ACTION

TDI ENFORCEMENT FILES NO. 57649

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 Carl Cuthbert Davis, Jr., M.D. (Dr. Davis). The Texas Department of Insurance, Division of Workers' Compensation (Division) Staff alleges that Dr. Davis 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. Davis 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 § 180.26(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, 180.21, 180.22, 180.23, and 180.26; and TEX. GOV'T CODE ANN. §§ 2001.051-2001.178.

WAIVER

Dr. Davis 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. Davis 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. Dr. Davis was last approved to be on the Division's Designated Doctor List on October 29, 2009.

Complaints Filed Against Dr. Davis

Failure to File Narrative Report with Insurance Carrier

2. Dr. Davis failed to file the narrative report with the insurance carrier (Injured Employee: R.G.; Carrier Number: 406081404700010160; DWC Claim Number xxxx8867).
 - a. Dr. Davis performed a designated doctor examination of the injured employee on November 17, 2009, to determine issues other than MMI and Impairment Rating.
 - b. The doctor had all necessary records prior to the examination.
 - c. The examination was deemed complete on November 17, 2009, and the doctor was required to send a narrative report to the injured employee, the insurance carrier, and the treating doctor by November 24, 2009 (no later than seven working days after the exam).
 - d. A copy of the narrative report was received by the Division on December 15, 2009, which was then forwarded to the carrier.

Failure to File the DWC Form-69 in a Timely Manner

3. Dr. Davis filed the DWC Form-69 with the Division 7 days past the required deadline (Injured Employee: R.B.; Carrier Number: 99H0000514811; DWC Claim Number: xxxx0711).
 - a. Dr. Davis performed a designated doctor examination of the injured employee on June 16, 2009.
 - b. Dr. Davis had all of the necessary medical records prior to the date of the examination.
 - c. The examination was deemed complete on June 16, 2009.
 - d. The DWC Form-69 was required to be sent to the injured employee, the insurance carrier and the Division by June 25, 2009.
 - e. Dr. Davis filed the DWC Form-69 with the Division on July 2, 2009, or 7 days past the required deadline.

Failure to File Letters of Clarification (LOCs) in a Timely Manner

4. Dr. Davis filed the LOC with the Division 50 days past the required deadline (Injured Employee: M.B.; Carrier Number: 940529; DWC Claim Number: xxxx9899).
 - a. An LOC request was sent by facsimile to Dr. Davis on November 4, 2009.
 - b. Dr. Davis was required to file the LOC by November 9, 2009, five days after receipt.
 - c. Dr. Davis filed the LOC with the Division on December 29, 2009, or 50 days past the required deadline.
5. Dr. Davis filed the LOC with the Division 25 days past the required deadline (Injured Employee: D.G.; Carrier Number: 4650249252; DWC Claim Number: xxxx5579).
 - a. An LOC request was sent by facsimile to Dr. Davis on November 9, 2009.
 - b. Dr. Davis was required to file the LOC by November 16, 2009, five days after receipt.

- c. Dr. Davis filed the LOC with the Division on December 11, 2009, or 25 days past the required deadline.
6. Dr. Davis filed the LOC with the Division 45 days past the required deadline (Injured Employee: E.V.; Carrier Number: 99K0000568887; DWC Claim Number: xxxx7035).
 - a. An LOC request was sent by First Class Mail to Dr. Davis on October 20, 2009.
 - b. Per 28 TEX. ADMIN. CODE § 102.5(d), the letter was deemed received five days after mailing, therefore the LOC request was deemed received by Dr. Davis on October 26, 2009.
 - c. Dr. Davis was required to file the LOC by November 2, 2009, five days after receipt.
 - d. Dr. Davis filed the LOC with the Division on December 17, 2009, or 45 days past the required deadline.

Other Considerations

7. 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. Davis of resolving this dispute through administrative or judicial proceedings.
8. Dr. Davis contracted with a scheduling company to file narrative reports, DWC-69s and responses to LOCs for him, and relied on the scheduling company to submit those reports in a timely manner.
9. Dr. Davis and the Division agree that an appropriate disposition of this case is the payment of an administrative penalty and full compliance with this Order.
10. In consideration of this Order, the Division agrees that it will not pursue any additional enforcement action(s) against Dr. Davis for violations of untimely LOCs, untimely DWC Forms-69, untimely Forms-73, or any other alleged violation(s) of the applicable rules, which occurred prior to the date of entry of this Order. The Division maintains its ability to take enforcement action against Dr. Davis for any violation(s) of the applicable rules occurring after the date of entry of this Order.

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, 180.21, 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. Davis 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 DDL, 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. 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. Davis violated 28 TEX. ADMIN. CODE § 126.7(p), each time he failed to file the narrative report in a timely manner.
 - b. Dr. Davis violated 28 TEX. ADMIN. CODE § 126.7(u), each time he failed to file the letter of clarification in a timely manner.
 - c. Dr. Davis 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. Davis failed to timely file the narrative report with the insurance carrier in one (1) instance.
10. Dr. Davis failed to timely file the DWC Form-69 with the Division in one (1) instance.
11. Dr. Davis failed to timely file the letter of clarification in four (3) instances.

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

IT IS THEREFORE ORDERED that thirty (30) days from the date of the entry of this Order, Dr. Carl Cuthbert Davis, Jr. shall be suspended from the designated doctor list for a period of ninety (90) days. During this suspension, Dr. Davis will not be assigned, nor shall he accept, initial designated doctor appointments.

IT IS FURTHER ORDERED that during this ninety (90) day suspension, Dr. Carl Cuthbert Davis, Jr., upon request of the Division, shall accept appointments and timely conduct subsequent examinations and/or reexaminations of injured workers for which he was previously assigned to as a designated doctor and shall timely respond to all Division requests for letters of clarification.

IT IS ALSO ORDERED that Dr. Carl Cuthbert Davis, Jr. 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 TWO HUNDRED AND FIFTY DOLLARS (\$1,250.00). 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, Enforcement Division-DWC, Division 3721, MC-9999, P.O. Box 149104, Austin, Texas 78714-9104.

IT IS ALSO ORDERED within thirty days from the date of the entry of this order that Dr. Carl Cuthbert Davis, Jr. will reduce his appointment location matrix to Harris County and Galveston County and will not modify his appointment location matrix for ninety days without prior approval from the Office of the Medical Advisor. Therefore, for ninety days there will be no additions or deletions of counties unless approved by the Office of the Medical Advisor.

IT IS ALSO ORDERED that within 180 days from the date of this order, Dr. Carl Cuthbert Davis, Jr. shall attend a Division of Workers' Compensation sponsored educational course or event related to compliance training for doctors and medical office staff. Evidence of attendance shall be submitted to the Division within thirty (30) days of attendance of said event, and shall be sent to the Texas Department of Insurance, Enforcement Division-DWC, Division 3721, MC-9999, P.O. Box 149104, Austin, Texas 78714-9104.

IT IS ALSO ORDERED by the Commissioner of Workers' Compensation that should Dr. Carl Cuthbert Davis, Jr. fail to comply with the terms of this Order that Dr. Carl Cuthbert Davis, Jr. will have committed an additional administrative violation and his failure to comply with the terms of this Order may subject Dr. Carl Cuthbert Davis, Jr. 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:



Kibya Doyaleh

DWC - 11 - 0031

Vidya Gopalakrishna
Staff Attorney, Enforcement Division
Texas Department of Insurance

AGREED, ACCEPTED, and EXECUTED on this 18 day of Feb, 2011 by:




Signature of Carl Cuthbert Davis, Jr., M.D.

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

BEFORE ME, CARMEN L. MANZO, a notary public in and for the State of Texas, on this day personally appeared Carl C. Davis Jr MD, known to me or proven to me through _____ 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:

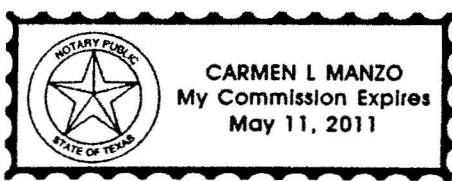
1. "My name is Carl Cuthbert Davis, Jr., M.D. I am of sound mind, capable of making this statement, and personally acquainted with the facts stated in this Consent Order.
2. I have read the terms and conditions contained within this Consent Order, and I have knowingly and voluntarily entered into it.
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

CARL C. DAVIS, JR. M.D.
Typed/Printed Name

Given under my hand and seal of office this 18th day of February, 2011.

(NOTARY SEAL)



Carmen L. Manzo
Notary Public, State of Texas
My commission expires: 5/11/11