

No. DWC - 10 - 0121

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

Date: DEC 03 2010

Subject Considered:

CHARLES R. OSBORN, D.C.
P.O. Box 2597
Waxahachie, Texas 75168

**CONSENT ORDER
DISCIPLINARY ACTION**
TDI ENFORCEMENT FILE NOS. 52734 & 55427

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 Charles R. Osborn, D.C. ("Dr. Osborn"). The Texas Department of Insurance, Division of Workers' Compensation Staff ("Division Staff") alleges that Dr. Osborn 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. Osborn 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, 408.023, 408.0231, 413.011(e), 413.0511, 413.0512, 414.002, 415.003, 415.021, and 415.023; 28 TEX. ADMIN. CODE §§ 134.201, 134.202, 137.10, 137.100, 180.3, 180.22, 180.26, and 180.27; and TEX. GOV'T CODE ANN. §§ 2001.051-2001.178.

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WAIVER

Dr. Osborn 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. Osborn waives all of 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:

Medical Quality Review #09-QR-001

1. Pursuant to TEX. LAB. CODE ANN. § 413.0512, the Division of Workers' Compensation's Office of the Medical Advisor (OMA) conducted a medical quality review of health care provided by Dr. Osborn, Medical Quality Review #09-QR-001.
2. Dr. Osborn is a Texas licensed chiropractor, license number 4497, and he provides chiropractic treatment and care to injured employees in the workers' compensation system.
3. After completing the review of seven cases, the Office of the Medical Advisor alleged that in one case Dr. Osborn provided treatment that was unsupported by the documentation, was inconsistent with the Official Disability Guidelines ("ODG"), and was excessive, unnecessary, and unreasonable and did not meet professionally recognized standards of care.
4. Dr. Osborn provided a response to the Medical Advisor, which he believes provides evidence that his diagnosis and treatment of the patients was proper, well documented and met professionally recognized standards.

Improperly Billing as a Commission on Accreditation of Rehabilitation Facility ("CARF")

5. Dr. Osborn billed for health care services as a CARF accredited facility after his accreditation expired.
 - a. Dr. Osborn's CARF accreditation expired on or about January 1, 2005.
 - b. Dr. Osborn designated his facility as CARF accredited for dates of service November 26, 2007 through March 6, 2008.

- c. Dr. Osborn billed for 60 separate health care services using the CARF modifier, "CA", which served to increase his reimbursement rate from 80% of the Maximum Allowable Reimbursement ("MAR") to 100% MAR.
- d. For 30 services billed, Dr. Osborn received reimbursement at the CARF accreditation rate of 100% of the MAR, resulting in overpayment of \$6,000.

Felony Conviction

6. On or about November 12, 2009, a judgment of guilty was entered against Dr. Osborn in case styled State of Texas vs. Charles Ray Osborn, Cause Number 34115CR, in the 40th Judicial District of Ellis County, Texas. The Judgment stated Dr. Osborn was convicted of a false statement to obtain property or credit, a felony, and that Dr. Osborn was sentenced to 10 years imprisonment, suspended in entirety, and restitution of \$285,000 to Ellis County Community Supervisions and Corrections.

License Suspension

7. On May 20, 2010, the Texas Board of Chiropractic Examiners ("TBCE") entered order 110-099 suspending Dr. Osborn's license for 10 years, 8 years probated.

Other Considerations

8. Dr. Osborn practiced as a chiropractor and/or rendered chiropractic care with a suspended license. Dr. Osborn billed for chiropractic services rendered to employees in the Workers' Compensation system for dates of services after May 20, 2010.
9. Bona fide disputes and controversies exist between the parties, however, the parties desire to compromise and settle the above referenced claims. This 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 of resolving this dispute through administrative or judicial proceedings.
10. Upon the execution date of this order, Dr. Osborn agrees he will not participate in the Workers' Compensation system as a network or non-network Health Care Provider.
11. Upon the execution date of this order, Dr. Osborn agrees he will not participate in the Workers' Compensation system as a network or non-network Health Care Practitioner. Therefore, he will not participate in treating, examining, and/or consulting with other physicians regarding injured employees who are covered under the Workers' Compensation system.
12. Upon the execution date of this order, Dr. Osborn agrees he will receive no direct or indirect remuneration from the Workers' Compensation system.

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, 408.023, 408.0231, 413.011(e), 413.0511, 413.0512, 414.002, 415.003, 415.021, and 415.023; 28 TEX. ADMIN. CODE §§ 134.201, 134.202, 137.10, 137.100, 180.3, 180.22, 180.26, and 180.27; 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. Osborn has knowingly and voluntarily waived all procedural rights to which he may have been entitled regarding the entry of this Order.
4. Dr. Osborn provided treatment that did not comport with the ODG, an evidence based medicine treatment guideline, as adopted pursuant to 28 TEX. ADMIN. CODE § 137.100(a).
5. Dr. Osborn submitted bills as a CARF accredited facility in violation of the Division's fee guidelines.
6. The Commissioner of Worker's Compensation may impose sanctions on a doctor for the reasons listed in TEX. LAB. CODE ANN. § 408.0231 and 28 TEX. ADMIN. CODE § 180.26, reasons which include evidence that the doctor's diagnoses or treatments are substantially different from those the commissioner finds to be fair and reasonable or for the professional failure to practice medicine or provide health care in an acceptable manner consistent with the public health, safety, and welfare.
7. Dr. Osborn's license has been suspended by his licensing authority which, in accordance with TEX. LAB. CODE ANN. §408.0231(c)(4), is grounds for imposing sanctions.
8. Dr. Osborn has been convicted of a felony criminal offense which, in accordance with TEX. LAB. CODE ANN. §408.0231(c)(7), is grounds for imposing sanctions.
9. Dr. Osborn violated statutes or regulations relevant to the provision of and payments for health care; which, in accordance with 28 TEX. ADMIN. CODE § 180.26(d)(1)&(2), is grounds for imposing sanctions.
10. Pursuant to TEX. LAB. CODE ANN. §§ 402.072, 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 deprive a

person of the right to practice before the Division or of the right to receive remuneration under the Act.

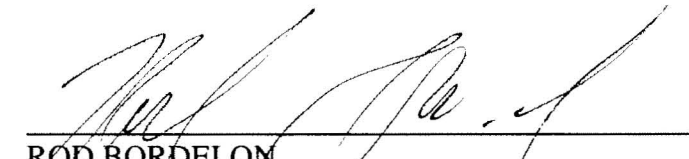
Based on the Findings of Fact and Conclusions of Law above, the Commissioner of Workers' Compensation has determined that the appropriate disposition is the imposition of the following sanctions and full compliance with the terms of this Order.

IT IS THEREFORE ORDERED that upon the execution date of this order, Charles R. Osborn, D.C. shall not participate in the Workers' Compensation system as a network or non-network Health Care Provider.

IT IS FURTHER ORDERED that upon the execution date of this order, Charles R. Osborn, D.C. shall not participate in the Workers' Compensation system as a network or non-network Health Care Practitioner. Therefore, Charles R. Osborn, D.C. shall not participate in treating, examining, and/or consulting with other physicians regarding injured employees who are covered under the Workers' Compensation system.

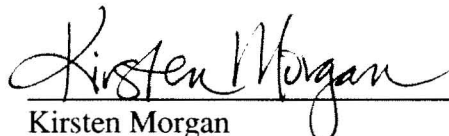
IT IS FURTHER ORDERED that upon the execution date of this order, Charles R. Osborn, D.C. shall receive no direct or indirect remuneration from the Workers' Compensation system.

IT IS FURTHER ORDERED by the Commissioner of Workers' Compensation that should Charles R. Osborn, D.C. fail to comply with the terms of this order that Charles R. Osborn, D.C. will have committed an administrative violation and that his failure to comply with the terms of this order may subject Charles R. Osborn, D.C. 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 BY:

Charles Osborn
Signature of Charles R. Osborn, D.C.

11-22-10
Date

CHARLES R OSBORN
Printed Name of Charles R. Osborn, D.C.

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STATE OF TEXAS §
 §
COUNTY OF ELLIS §

BEFORE ME, JAN WARD, a notary public in and for the State of Texas, on this day personally appeared CHARLES OSBORN, 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 Charles R. Osborn, D.C. 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."

Dr Charles Osborn

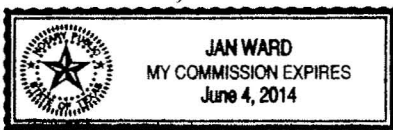
Signature

Dr Charles Osborn

Typed/Printed Name

Given under my hand and seal of office this 22nd day of November, 2010.

(NOTARY SEAL)



Jan Ward

Notary Public, State of Texas

My commission expires: 6/4/2014