

No. **DWC-10-0010**

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

Date: **FEB 26 2010**

Subject Considered:

DR. AUDREY LEE JONES
803 Main Street
Alamo, Texas 78516-2560

CONSENT ORDER
DISCIPLINARY ACTION
TDI ENFORCEMENT FILE NO. 54200

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. Audrey Lee Jones ("Jones"). The Texas Department of Insurance, Division of Workers' Compensation Staff ("Division Staff") alleges that Jones 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 Jones 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, 414.002, 414.003, 415.003, 415.021, and 415.023; and 28 TEX. ADMIN. CODE §§ 126.7, 130.1, 130.3, 130.6, and 180.1-180.28; and TEX. GOV'T CODE ANN. §§ 2001.051-2001.178.

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WAIVER

Jones 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. Jones 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:

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), 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 MMI and/or permanent whole body impairment in the place of the treating doctor), a designated doctor, a required medical examination doctor selected by the carrier and approved by the commission after a designated doctor has performed a MMI and/or permanent whole body impairment exam.
3. In accordance with 28 TEX. ADMIN. CODE § 130.1(a)(1)(B)(i)(ii), only doctors to whom the commission has certified to assign impairment rating or otherwise been given an exception to, are authorized to assign an impairment rating. Doctors not certified are only authorized to determine whether an employee has reached MMI and if a permanent impairment exists.
4. Jones was certified to assign impairment ratings on April 27, 2005.
5. Jones was an authorized doctor during the time period in question.

System Participant – Designated Doctor

6. 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.

7. Jones was last approved to be on the Division's Designated Doctor List on April 27, 2005.
8. Jones was a designated doctor during the time period in question.

**Certification of Maximum Medical Improvement and
Evaluation of Impairment Ratings**

9. In accordance with TEX. LAB. CODE ANN. § 408.123(a)-(b), after an employee has been certified by a doctor as having reached MMI, the certifying doctor shall evaluate the condition of the employee and assign an impairment rating.
10. In accordance with TEX. LAB. CODE ANN. § 408.123(b), a certifying doctor shall issue a written report certifying that MMI has been reached, stating the employee's impairment rating, and provide it to the Division, the employee, and the insurance carrier.
11. 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.
12. 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.
13. Pursuant to 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 MMI 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.

Designated Doctor's Role and Responsibilities

14. In accordance with TEX. LAB. CODE ANN. § 408.125, if an impairment rating is disputed, the Commissioner shall direct the employee to the next available doctor on the Division's list of designated doctors, as provided by TEX. LAB. CODE ANN. § 408.0041.
15. In accordance with TEX. LAB. CODE ANN. § 408.0041(a)-(b), 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 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.

16. 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.

August 11, 2006 MMI Examination

17. Jones performed a MMI examination of the injured employee J.U. on August 11, 2006.
18. The exam was deemed complete on August 11, 2006, and the DWC Form-69 was required to be sent to the injured employee, the insurance carrier, and the Division by August 22, 2006.
19. The DWC Form-69 was received by the Division by facsimile on September 1, 2006, or 10 days past the required deadline.

June 23, 2006 MMI Examination

20. Jones performed a MMI examination of the injured employee M.E. on June 23, 2006.
21. The exam was deemed complete on June 23, 2006, and the DWC Form-69 was required to be sent to the injured employee, the insurance carrier, and Division by July 5, 2006.
22. The DWC Form-69 was received by the Division by facsimile on August 8, 2006, or 34 days past the required deadline.

September 21, 2006 MMI Examination

23. Jones performed a MMI examination of the injured employee M.R. on September 21, 2006.
24. The exam was deemed complete on September 21, 2006, and the DWC Form-69 was required to be sent to the injured employee, the insurance carrier, and the Division by October 2, 2006.
25. The DWC Form-69 was received by the Division by facsimile on October 19, 2006, or 17 days past the required deadline.

April 1, 2006 MMI Examination

26. Jones performed a MMI examination of the injured employee N.B. on April 1, 2006.
27. The exam was deemed complete on April 1, 2006, and the DWC Form-69 was required to be sent to the injured employee, the insurance carrier, and the Division by April 11, 2006.
28. The DWC Form-69 was received by the Division by facsimile on November 2, 2006, or 205 days past the required deadline.

December 4, 2006 MMI Examination

29. Jones performed a MMI examination of the injured employee R.C. on December 4, 2006.
30. The exam was deemed complete on December 4, 2006, and the DWC Form-69 was required to be sent to the injured employee, the insurance carrier, and the Division by December 13, 2006.
31. The DWC Form-69 was received by the Division by facsimile on January 10, 2007, or 28 days past the required deadline.

November 30, 2006 MMI Examination

32. Jones performed a MMI examination of the injured employee R.M. on November 30, 2006.
33. The exam was deemed complete on November 30, 2006, and the DWC Form-69 was required to be sent to the injured employee, the insurance carrier, and the Division by December 11, 2006.
34. The DWC Form-69 was received by the Division on May 10, 2007, or 150 days past the required deadline.

Aggravating Factors

35. 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.

36. 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.
37. The payment of impairment income benefits to injured employees was delayed as a result of Jones's inability to submit the DWC Form-69 in a timely manner.

Mitigating Factors

38. Jones agrees not to renew her designated doctor certification.

Other Considerations

39. Jones's designated doctor certification expired on June 11, 2008.
40. 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 Jones 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, 414.002, 414.003, 415.003, 415.021, and 415.023; and 28 TEX. ADMIN. CODE §§ 126.7, 130.1, 130.3, 130.6, and 180.1-180.28; 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. Jones has knowingly and voluntarily waived all procedural rights to which she 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. § 402.072, the division may impose sanctions against any person regulated by the division.

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COMMISSIONER'S ORDER

Dr. Audrey Lee Jones

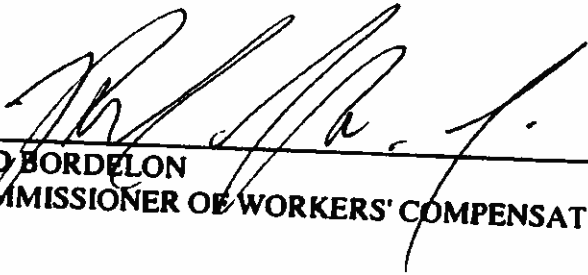
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5. In accordance with TEX. LAB. CODE ANN. § 415.021, the Commissioner of Workers' Compensation may assess an administrative penalty against a person who commits an administrative violation.
6. In accordance with TEX. LAB. CODE ANN. § 415.003(5), a health care provider, like a designated doctor, commits an administrative violation each time he or she violates a commissioner's rule.
7. Jones violated 28 TEX. ADMIN. CODE 130.1(d)(2) each time she failed to file the DWC Form-69 in a timely manner.
8. Jones committed six (6) administrative violations.

Based on the Findings of Fact and Conclusions of Law above, the Commissioner of Workers' Compensation has determined that the appropriate disposition is to order Jones to not renew her designated doctor certification and full compliance with the terms of this Order.

IT IS THEREFORE ORDERED that Dr. Audrey Lee Jones shall not renew her designated doctor certification.

IT IS ALSO ORDERED by the Commissioner of Workers' Compensation that should Dr. Audrey Lee Jones fail to comply with the terms of this Order, Dr. Audrey Lee Jones will have committed an additional administrative violation and her failure to comply with the terms of this Order may subject Dr. Audrey Lee Jones 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

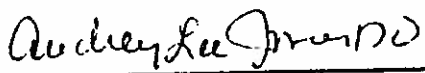
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COMMISSIONER'S ORDER
Dr. Audrey Lee Jones
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FOR THE STAFF:


~~Stephen Fung~~ Vidya Gopalakrishna
Staff Attorney, Enforcement Division
Texas Department of Insurance

AGREED, ACCEPTED, and EXECUTED on this 10th day of Feb., ²⁰¹⁰~~2009~~ by:



Dr. Audrey Lee Jones

STATE OF TEXAS §
 §
COUNTY OF Hidalgo §

BEFORE ME, Sylvia Martinez, a notary public in and for the State of Texas, on this day personally appeared Audrey L. Jones, known to me or proven to me through TEAS DRUGS 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:

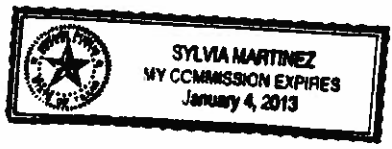
1. "My name is Dr. Audrey Lee Jones. I am of sound mind, capable of making this statement, and personally acquainted with the facts stated in this Consent Order.
2. I have read the terms and conditions contained within this Consent Order, and I have knowingly and voluntarily entered into it.
3. I consent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

Audrey L Jones
Signature

Audrey L. Jones
Typed/Printed Name

Given under my hand and seal of office this 10th day of Feb, 2010, 2009.

(NOTARY SEAL)



Sylvia Martinez
Notary Public, State of Texas
My commission expires: 1/4/13