

No. DWC - 12 - 0174

OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF WORKERS' COMPENSATION

Date: OCT 17 2012

Subject Considered:

GREGORY WAYNE BAKER, D.C.
4001 Preston Avenue, Suite 100
Pasadena, Texas 77505

CONSENT ORDER
TDI ENFORCEMENT FILE NO. 476

General remarks and official action taken:

The commissioner of workers' compensation considers whether disciplinary action should be taken against Gregory Wayne Baker, D.C.

WAIVER

Dr. Baker acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Dr. Baker 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. Baker is a chiropractor who was certified to be a designated doctor (DD) in the Texas workers' compensation system. Dr. Baker's last DD certification expired on April 15, 2011.
2. Dr. Baker was not tiered in 2007, 2009, or 2011 Performance Based Oversight.
3. Pursuant to TEX. LAB. CODE ANN. § 401.011(15), a DD is a doctor appointed by mutual agreement of the parties or by the division to recommend a resolution of a dispute as to the medical condition of an injured employee.
4. Pursuant to TEX. LAB. CODE ANN. § 408.0041(a), and 28 TEX. ADMIN. CODE § 126.7(c)¹, a DD is appointed to recommend a resolution of a dispute as to the medical condition of an injured employee and may be called upon to perform medical examinations to resolve any question about the impairment caused by the compensable injury, the attainment of maximum medical improvement (MMI), the

¹ 28 TEX. ADMIN. CODE § 126.7 was repealed and re-codified in chapter 127 effective February 1, 2011, but was in effect at the time the violation occurred.

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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.

5. In accordance with TEX. LAB. CODE ANN. § 408.0041(b) and 28 TEX. ADMIN. CODE § 126.7(h), the DD exam shall be performed by the next available doctor on the division's list of DDs whose credentials are appropriate for the issue in question and the injured employee's medical condition as determined by commissioner rule. A DD, other than a chiropractor, is subject to Section 408.0043. A DD who is a chiropractor is subject to Section 408.0045.
6. Pursuant to TEX. LAB. CODE ANN. § 408.0043, a person, other than a chiropractor or a dentist, who performs a DD exam, must hold a professional certification in a health care specialty appropriate to the type of health care that the injured employee is receiving. Pursuant to (a), TEX. LAB. CODE ANN. § 408.0045, a chiropractor who performs chiropractic services as a DD must be licensed to engage in the practice of chiropractic.
7. Pursuant to 28 TEX. ADMIN. CODE § 126.7(i), the DD is authorized to receive the employee's confidential medical records to assist in the resolution of a dispute under this section without a signed release from the employee.
8. On March 30, 2010, Dr. Baker performed a DD exam he was not ordered or authorized to perform. Dr. Baker performed this exam in the place of David P. Schwartz, D.O.
9. Dr. Baker received the injured employee's confidential medical records without receiving a signed release from the injured employee.

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. §§ 401.011, 401.021, 402.001, 402.00111, 402.00114, 402.00116, 402.00128, 408.0041, 408.0043, 408.0045, 415.003, 415.021, and 415.0215; 28 TEX. ADMIN. CODE §§ 126.7, 180.21, and 180.26²; and TEX. GOV'T CODE ANN. §§ 2001.051–2001.178.
2. The commissioner of workers' compensation has authority to informally dispose of this matter 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

² Unless otherwise noted, all rules cited refer to those in effect at the time the violations occurred.

³ This citation refers to the version of 28 TEX. ADMIN. CODE § 180.26 presently in effect.

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3. 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.
4. In accordance with TEX. LAB. CODE ANN. § 415.0215, the commissioner of workers' compensation may impose sanctions against any person regulated by the division.
5. Pursuant to TEX. LAB. CODE ANN. § 415.003(5) & (6), a health care provider, like a DD, commits an administrative violation each time he fails to comply with a provision of this subtitle or each time he violates a commissioner's rule.
6. Dr. Baker violated TEX. LAB. CODE ANN. § 408.0041 and 28 TEX. ADMIN. CODE § 126.7 because he performed a DD exam when not appointed to do so. When Dr. Baker performed this DD exam, he did not meet the definition of a DD pursuant to TEX. LAB. CODE ANN. § 401.011(15), because he was not appointed by mutual agreement of the parties or by the division.
7. Pursuant to 28 TEX. ADMIN. CODE § 180.21(m), the commissioner may delete or suspend Dr. Baker from the designated doctor list because he violated 28 TEX. ADMIN. CODE § 180.26(c)(5)(E) by practicing without credentials.
8. Dr. Baker violated TEX. LAB. CODE ANN. §§ 408.0043 and 408.0045 because he performed a DD exam without the appropriate credentials. Dr. Baker is a chiropractor, and the doctor assigned to do the DD exam at issue was a D.O.
9. Dr. Baker violated 28 TEX. ADMIN. CODE § 126.7(i) because he was not the DD appointed to the case, and he received the injured employee's confidential medical records without receiving a signed release from the employee.

ORDER

It is ORDERED that as of the execution date of this order, Gregory Wayne Baker, D.C. is permanently removed from the division's designated doctor list. Gregory Wayne Baker, D.C. must not apply for reinstatement to the division's designated doctor list. Should Gregory Wayne Baker, D.C. attempt to apply for reinstatement to the division's designated doctor list, his application will be summarily denied.

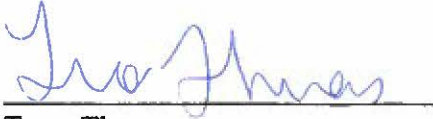
It is ORDERED that as of the execution date of this order, Gregory Wayne Baker, D.C. is deprived of the right to certify maximum medical improvement and/or assign impairment ratings in the workers' compensation system.



ROB BORDELON
COMMISSIONER OF WORKERS' COMPENSATION

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FOR THE STAFF:



Terra Thomas
Staff Attorney, Compliance Division
Texas Department of Insurance

AFFIDAVIT

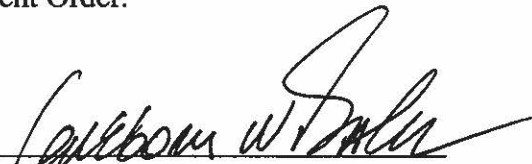
STATE OF Texas §
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COUNTY OF Harris §

Before me, the undersigned authority, personally appeared the affiant, Gregory Wayne Baker, D.C., who being by me duly sworn, deposed as follows:

"My name is Gregory Wayne Baker, D.C. I am of sound mind, capable of making this statement, and have personal knowledge of these facts which are true and correct.

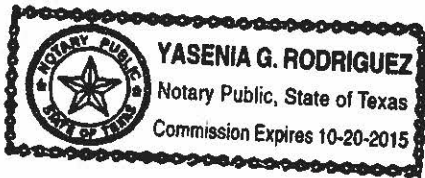
"I waive rights provided by the Texas Labor Code and other applicable law and acknowledge the jurisdiction of the Texas Commissioner of Workers' Compensation.

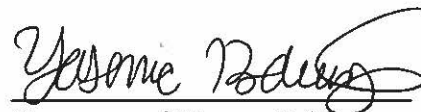
"I voluntarily enter into this Consent Order and consent to the issuance and service of this Consent Order."


Affiant

SWORN TO AND SUBSCRIBED before me on October 9th, 2012.

(NOTARY SEAL)




Signature of Notary Public

Yasenia Rodriguez
Printed Name of Notary Public