

No. **DWC-10-0006**

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

Date: **FEB 16 2010**

**Subject Considered:**

**DR. LUIS F. VILLARREAL**  
4619 San Dario Ave. # 310  
Laredo, TX 78041

**CONSENT ORDER**  
**DISCIPLINARY ACTION**  
TDI ENFORCEMENT FILE NO. 55333

**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. Luis F. Villarreal, M.D. ("Villarreal"). The Texas Department of Insurance, Division of Workers' Compensation Staff ("Division Staff") alleges that Villarreal 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 Villarreal 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

Villarreal 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. Villarreal 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. Villarreal was a certified doctor.
6. Villarreal's certification to assign impairment ratings expired on September 29, 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 providing any other information required by the commissioner to the Division, the employee, and the insurance carrier.
9. In accordance with 28 TEX. ADMIN. CODE § 130.1(d)(1), certification of maximum medical improvement 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. 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**

12. 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.

13. 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.
14. 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.
15. Villarreal was a designated doctor.
16. Villarreal requested to be removed from the Designated Doctor List on February 22, 2009.

### **Designated Doctor's Role and Responsibilities**

17. 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 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.
18. 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.
19. 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.

## Assignment of a Designated Doctor

20. In accordance with TEX. LAB. CODE ANN. § 408.0041(b), a medical examination requested under Subsection TEX. LAB. CODE ANN. § 408.0041 (a) shall be performed by the next available doctor on the Division's list of designated doctors whose credentials are appropriate for the issue in question and the injured employee's medical condition as determined by commissioner rule.
21. Pursuant to 28 TEX. ADMIN. CODE § 126.7(e), the Division, within 10 days after approval of a valid request, shall issue a written notice that assigns a designated doctor; requires an exam to be conducted on a date no earlier than 14 days, but no later than 21 days from the date of the written notice; and notify the designated doctor, the employee, the employee's representative, if any, and the insurance carrier that the designated doctor will be directed to examine the employee. The written notice shall indicate the designated doctor's name, license number, practice address and telephone number, and the date and time of the examination or the date range for the examination to be conducted; explain the purpose of the designated doctor examination; require the employee to submit to an examination by the designated doctor; and require the treating doctor and insurance carrier to forward all medical records.
22. Pursuant to 28 TEX. ADMIN. CODE § 126.7(f), the designated doctor's office and the employee shall contact each other if there exists a scheduling conflict for the designated doctor appointment. The designated doctor or the employee who has the scheduling conflict must make the contact at least 24 hours prior to the appointment. The 24-hour requirement will be waived in an emergency situation (such as a death in the immediate family or a medical emergency). The rescheduled examination shall be set to occur within 21 days of the originally scheduled examination. Within 24 hours of rescheduling, the designated doctor shall contact the Division's field office and the insurance carrier with the time and date of the rescheduled examination. If the examination cannot be rescheduled within 21 days, the designated doctor shall notify the Division and the Division shall select a new designated doctor.

## Complaints Filed Against Villarreal

23. The Division received eight separate complaints alleging Villarreal failed to timely file the DWC Form-69.
24. The Division received four separate complaints alleging Villarreal failed to timely file the letter of clarification.

25. The Division received six separate complaints alleging Villarreal failed to timely make contact with an injured employee prior to a designated doctor appointment to notify them of a scheduling conflict.
26. The Division received one complaint alleging Villarreal failed to timely notify the Division of a rescheduled designated doctor appointment.
27. The Division received seven separate complaints alleging Villarreal failed to timely reschedule a designated doctor appointment.

### **Aggravating Factors**

#### **Harm to Injured Workers**

28. 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.
29. 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 findings. If the finding of impairment is made by a doctor chosen by the claimant and the finding is contested, a designated doctor or a doctor selected by the insurance carrier must be able to confirm the objective clinical or laboratory finding on which the finding of impairment is based.
30. The payments of impairment income benefits to injured employees may have been delayed as a result of Villarreal's inability to submit the DWC Form-69 and letter of clarification in a timely manner.
31. Villarreal's failure to timely file the DWC Form-69 and LOC's delayed the dispute resolution process.

### **Mitigating Factors**

32. Villarreal employed a scheduling company, Genesis Medical Evaluators ASO, Inc. ("Genesis"), to perform the administrative functions of his designated doctor duties.
33. Villarreal terminated his relationship with Genesis in or around October 2008.
34. The Division was notified on or about February 22, 2009 that Villarreal was no longer accepting designated doctor appointments and requested his name be deleted from the Designated Doctor List.

35. Villarreal agrees that he will not reapply for admission to the Designated Doctor List for a period of one year from the date of the execution of this order.

### **Other Considerations**

36. Villarreal does not admit nor does he deny the allegations made by Division Staff and asserts that the existence of a violation of the Act and rules promulgated by the Commissioner of Workers' Compensation is in dispute.
37. The complaints filed against Villarreal were based on allegations that he failed to fulfill the administrative duties required of a designated doctor. These allegations do not reflect on his quality of care.
38. 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 Villarreal 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. Villarreal 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, the Commissioner of Workers' Compensation may assess an administrative penalty against a person who commits an administrative violation.

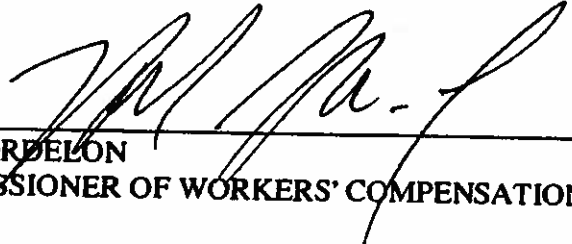
5. In accordance with TEX. LAB. CODE ANN. § 415.023(a), a person who commits an administrative violation under Section 415.001, 415.002, 415.003, or 415.0035 as a matter of practice is subject to an applicable rule adopted under TEX. LAB. CODE ANN. § 415.023(b) in addition to the penalty assessed for 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. 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.

Based on these findings of fact and conclusions of law, the Commissioner of Workers' Compensation approves the terms and conditions agreed to by Division Staff and Dr. Luis F. Villarreal and have determined that the appropriate disposition of this matter is to order full compliance with this Order.

**IT IS THEREFORE ORDERED** that Dr. Luis F. Villarreal will not reapply for admission to the Designated Doctor List for a period of one year from the date of the execution of this order.



**IT IS ALSO ORDERED** by the Commissioner of Workers' Compensation that should Dr. Luis F. Villarreal fail to comply with the terms of this Order that Dr. Luis F. Villarreal will have committed an additional administrative violation and his failure to comply with the terms of this Order may subject Dr. Luis F. Villarreal 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.



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ROD BORDELON  
COMMISSIONER OF WORKERS' COMPENSATION

FOR THE STAFF:



\_\_\_\_\_  
Kirsten Morgan  
Staff Attorney, Enforcement Division  
Texas Department of Insurance

**DWC-10-0006**

COMMISSIONER'S ORDER

Dr. Luis Villarreal, CTS # 55333, January 15, 2010

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AGREED, ACCEPTED, AND EXECUTED BY:



\_\_\_\_\_  
Signature of Dr. Luis F. Villarreal

2-3-10  
Date

Luis Federico Villarreal  
Printed Name of Dr. Luis F. Villarreal

DWC - 10 - 0006

STATE OF TEXAS §  
COUNTY OF Webb §

AFFIDAVIT OF DR. LUIS F. VILLARREAL

BEFORE ME, Adolfo G. Ramos, a notary public in and for the State of Texas, on this day personally appeared **LUIS F. VILLARREAL**, known to me or proven to me through (personally known) to be the person whose name is subscribed to the foregoing instrument, AGREED ORDER, TDI ENFORCEMENT FILE NO. 55333, 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 **LUIS F. VILLARREAL** and I am of sound mind, capable of making this statement, and personally acquainted with the facts stated in this Agreed Order.
2. I have read the terms and conditions contained within this Agreed Order, and I have knowingly and voluntarily entered into it.
3. I consent to the issuance and service of this Agreed Order, and I am executing the same for the purposes and consideration described herein.

*[Handwritten Signature]*

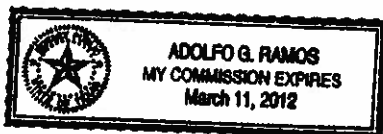
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Signature of Affiant

Luis Federico Villarreal

\_\_\_\_\_  
Typed/Printed Name of Affiant

Given under my hand and seal of office this 3 day of February, 2010.

[NOTARY SEAL HERE]



*[Handwritten Signature]*

\_\_\_\_\_  
Notary Public, State of Texas

My commission expires: \_\_\_\_\_