

No. **2194**

OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF WORKERS' COMPENSATION

Date: JAN 15 2013

Subject Considered:

HOWARD THOMAS DOUGLAS III, M.D.
4251 FM 2181
Corinth, Texas 76210

DEFAULT ORDER
SOAH DOCKET NO. 454-13-1330.C1
TDI ENFORCEMENT NO. 56

General remarks and official action taken:

The commissioner of workers' compensation considers whether disciplinary action should be taken against Howard Thomas Douglas III, M.D. (Dr. Douglas). The Texas Department of Insurance, Division of Workers' Compensation seeks to remove Dr. Douglas from the Texas workers' compensation system as a health care practitioner and to delete him from the division's designated doctor list because he violated the Texas Labor Code and Texas Administrative Code. It is further alleged that such conduct constitutes grounds for the imposition of sanctions as authorized by TEX. LAB. CODE ANN. ch. 415, TEX. LAB. CODE ANN. § 408.0231 and 28 TEX. ADMIN. CODE §180.26.

The commissioner of workers' compensation makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Dr. Douglas is a "health care practitioner" as defined by TEX. LAB. CODE ANN. § 401.011(21).
2. Dr. Douglas is a designated doctor (DD) in the Texas workers' compensation system and was last certified to assign impairment ratings on March 17, 2011.
3. Dr. Douglas was classified as a high tier performer in 2011 Performance Based Oversight (PBO) and an average tier performer in 2007 PBO. Dr. Douglas was not tiered in 2009 PBO.

4. The division's computer records show that the last known address provided to the division by Dr. Douglas in writing was 4251 FM 2181, Suite 230 512, Corinth, Texas 76210.
5. On November 8, 2012, the division sent a Notice of Violation (NOV) to Dr. Douglas pursuant to TEX. LAB. CODE ANN. § 415.032(a) and 28 TEX. ADMIN. CODE § 180.8.
6. Pursuant to 28 TEX. ADMIN. CODE § 180.8(b), the NOV included a summary of the duty the division believed Dr. Douglas failed to fulfill, a summary of the facts that established a violation occurred, a description of the sanction the division intended to assess, and information about the rights, obligations and procedures for Dr. Douglas to file a written answer or request a hearing.
7. The NOV alleged Dr. Douglas violated provisions of the Texas Labor Code and Texas Administrative Code. Pursuant to TEX. LAB. CODE ANN. § 408.0231 and 28 TEX. ADMIN. CODE § 180.26, the division asked that Dr. Douglas be removed from the division's designated doctor list.
8. Pursuant to TEX. LAB. CODE ANN. § 415.032(b) and 28 TEX. ADMIN. CODE § 180.8(c), no later than the 20th day after the date on which notice was received, Dr. Douglas was required to either consent to the proposed sanction or submit a written request for a hearing to the division.
9. The 20th day after the date the notice was deemed received fell on December 3, 2012. Therefore, pursuant to 1 TEX. ADMIN. CODE § 155.7, Dr. Douglas was to either consent to the proposed sanction or submit a written request for hearing to the division by December 3, 2012.
10. Dr. Douglas failed to consent to the proposed sanction or submit a written request for hearing to the division by December 3, 2012.
11. Pursuant to 28 TEX. ADMIN. CODE § 180.8(c), if the charged party fails to respond to the NOV within 20 days of receipt of the notice, the division shall schedule a hearing at the State Office of Administrative Hearings (SOAH) and provide notice of the hearing to the charged party in accordance with 28 TEX. ADMIN. CODE § 148.5.
12. A Notice of Hearing (NOH) was sent to Dr. Douglas on December 5, 2012, at his last known mailing address by first class mail and certified mail, return receipt requested.
13. The NOH informed Dr. Douglas of the allegations against him, the intended action, the right to appear and be represented by counsel, the time and place of the hearing, the statutes and rules involved, and the ability of the division to obtain a default order against him removing him from the DD list should he fail to file a written response.
14. The NOH contained the warnings to Dr. Douglas that are required by 28 TEX. ADMIN. CODE § 1.88 and 1 TEX. ADMIN. CODE § 155.501.

15. Dr. Douglas failed to file a written response to the NOH within twenty (20) days of the date the Notice of Hearing was mailed.

16. A disposition by default may be entered, pursuant to 28 TEX. ADMIN. CODE § 180.8(e):

For purposes of this section, events described in paragraphs (1) or (2) of this subsection constitute a default on the part of a charged party who receives a notice of hearing under subsection (c) of this section:

- (1) failure of the charged party to file a written response as provided by subsection (d) of this section; or
- (2) failure of the charged party to appear in person or by legal representative on the day and at the time set for hearing in a contested case, regardless of whether a written response has been filed.

17. In accordance with 28 TEX. ADMIN. CODE § 180.8(f), disposition by default requires the issuance of an Order against Dr. Douglas in which the allegations against him in the NOH are deemed admitted as true.

18. On September 12, 2011, Dr. Douglas performed four designated doctor (DD) exams he was not ordered to or authorized to perform. Dr. Douglas performed the exams in the place of Zahida Siddiqi, M.D.

19. Dr. Douglas received and reviewed the injured employee's confidential medical records without receiving a signed release from the injured employee.

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, 408.0231, 415.003, 415.021, and 415.0215; 28 TEX. ADMIN. CODE §§ 127.1, 127.5, 127.10, 130.1, 180.21, 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.
3. The division sent the Notice of Hearing, in this matter to the last known address of Dr. Douglas as reflected in the division's records and as evidenced by the attached affidavit. By such means, Dr. Douglas was afforded proper and timely notice of the hearing.
4. The division's allegations in the Notice of Hearing are deemed admitted as true pursuant to 28 TEX. ADMIN. CODE § 180.8.

5. In accordance with TEX. LAB. CODE ANN. § 408.0231 and 28 TEX. ADMIN. CODE §180.26, the commissioner of workers' compensation may impose a sanction against any person regulated by the division.
6. 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.
7. Pursuant to TEX. LAB. CODE ANN. § 415.0215, only the commissioner may impose a sanction suspending a certification required for the practice in the field of workers' compensation for a period greater than 30 days.
8. 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.
9. Pursuant to TEX. LAB. CODE ANN. § 408.0041(a), and 28 TEX. ADMIN. CODE § 127.1(a), 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 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.
10. Pursuant to TEX. LAB. CODE ANN. § 408.0041(b) and 28 TEX. ADMIN. CODE § 127.5(c), 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.
11. Dr. Douglas violated TEX. LAB. CODE ANN. § 408.0041 and 28 TEX. ADMIN. CODE §§ 127.1 and 127.5 because he performed DD exams when not appointed to do so. When Dr. Douglas performed these DD exams, 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.
12. Dr. Douglas violated 28 TEX. ADMIN. CODE § 127.5(b) by changing the examination address without good cause and the approval of the division.
13. Dr. Douglas violated 28 TEX. ADMIN. CODE § 127.10(a) because he was not the DD appointed to the case, and he received and reviewed the injured employee's confidential medical records.
14. Dr. Douglas violated 28 TEX. ADMIN. CODE § 130.1(a)(2) because he was not authorized by the division to make findings, certify MMI, or assign an impairment ratings for four injured employees.

15. Based upon the Findings of Fact and Conclusions of Law stated above, a disposition by default is proper pursuant to 28 TEX. ADMIN. CODE § 180.8.

It is ORDERED by the commissioner of workers' compensation that Howard Thomas Douglas, III, M.D. is permanently removed from the division's designated doctor list and that he is no longer eligible to certify maximum medical improvement and/or assign impairment ratings in the Texas workers' compensation system.



Rod Bordelon 005
Commissioner of Workers' Compensation

STATE OF TEXAS §
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COUNTY OF TRAVIS §

AFFIDAVIT

Before me, the undersigned authority, personally appeared Michelle Quartermaine, who, being by me duly sworn, deposed as follows:

“My name is Michelle Quartermaine and I am employed by the Texas Department of Insurance, Division of Workers’ Compensation. I am of sound mind, capable of making this affidavit, and have personal knowledge of these facts which are true and correct.

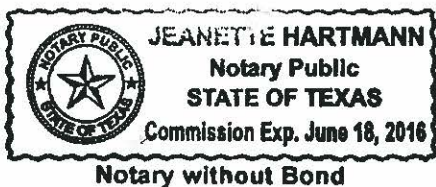
I have reviewed the computer records of the Texas Department of Insurance, Division of Workers’ Compensation and have confirmed that the last mailing address provided to the division by Howard Thomas Douglas, III, M.D. in writing was 4251 FM 2181, Suite 230 512, Corinth, Texas 76210.

I have reviewed records maintained by the division concerning Howard Thomas Douglas, III, M.D. I hereby attest that the file maintained by the Enforcement Section of the Compliance Division of the Texas Department of Insurance (Enforcement) contains a Notice of Hearing dated December 5, 2012, filed with the State Office of Administrative Hearings. The Notice of Hearing was addressed to Howard Thomas Douglas, III, M.D. at his last known address and mailed first class and certified, with return receipt requested, on December 5, 2012. A copy of the two page certified electronic mail log maintained by Enforcement is attached hereto as Exhibit A. A true and correct copy of the Notice of Hearing filed at the State Office of Administrative Hearings and sent to Respondent on December 5, 2012, is attached as Exhibit B.”

Michelle Quartermaine
Affiant

SWORN TO AND SUBSCRIBED before me on January 14, 2013.

(NOTARY SEAL)



Jeanette Hartmann
Signature of Notary Public
Jeanette Hartmann
Printed Name of Notary Public