

No. 4113

OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF WORKERS' COMPENSATION

Date: SEP 16 2015

Subject Considered:

ARTHUR S. HERNANDEZ, M.D.
88 Briggs Street, Suite 250
San Antonio, TX 78224-1269

CONSENT ORDER
TDI ENFORCEMENT FILE NO. 3530

General remarks and official action taken:

The commissioner of workers' compensation considers whether disciplinary action should be taken against Arthur S. Hernandez, M.D. (Dr. Hernandez).

WAIVER

Dr. Hernandez acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Dr. Hernandez 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. Hernandez is a physician licensed by the State of Texas on February 20, 1982. He holds Texas Medical License No. G1674.
2. Dr. Hernandez is a health care provider who provides medical treatment to injured employees in the Texas worker's compensation system.
3. Dr. Hernandez was not classified in the 2007, 2009, 2011, or 2013 Performance Based Oversight assessments.

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4. The division's Medical Advisor (whose duties are defined at TEX. LAB. CODE ANN. § 413.0511) and Medical Quality Review Panel (MQRP) (as established pursuant to TEX. LAB. CODE ANN. § 413.0512) conducted a complaint-based medical quality review (MQR), which was initiated based on one or more complaints received and in accordance with the approved Medical Quality Process. MQR No. 11-34 HCP included three cases, and MQR No. 12-199 HCP included four cases.

MQR NOS. 11-34 HCP and 12-199 HCP

5. Dr. Hernandez failed to meet the division's standards in that he did not practice medicine or provide health care in an acceptable manner consistent with the public health, safety, and welfare, and he committed administrative violations when he administered unreasonable treatment for chronic pain management, for seven injured employees he treated from August 2003 through approximately December 2013.
6. Dr. Hernandez's administered unreasonable treatment for chronic pain management based on the following actions that occurred for one or more of the injured employees.
 - a. Dr. Hernandez failed to appropriately document that he performed complete medical examinations/evaluations for all seven injured employees.
 - b. Dr. Hernandez failed to appropriately document reliable diagnoses to base his treatments for all seven injured employees.
 - c. Dr. Hernandez failed to appropriately document justification and medical necessity for both new prescriptions and refills of opioids, muscle relaxants, and/or benzodiazepines for all seven injured employees.
 - d. Dr. Hernandez failed to appropriately document how he identified and treated potential medication side-effects for all seven injured employees.
 - e. Dr. Hernandez failed to appropriately document that he administered drug-screen testing for all seven injured employees.
7. Dr. Hernandez ordered treatments and/or diagnostic testing without appropriately documenting justification. The treatments included:
 - a. Numerous epidural steroid injections for five injured employees;
 - b. Electromyography (EMG) for one injured employee;
 - c. Trigger point injections and facet injections for two injured employees; and

- d. E-stimulation, myofascial release, and ultrasound for one injured employee.
- 8. As mitigating factors, Dr. Hernandez has since transitioned to electronic medical records (EMR) and has terminated over 200 patients in the last two years due to drug-related aberrant behaviors.
- 9. Dr. Hernandez entered into an Agreed Order with the Texas Medical Board on April 10, 2015. The Agreed Order serves as a public reprimand and requires him to have his practice monitored, contact Texas A & M Health Science Center (K-STAR) for a two-day assessment, complete four hours of continuing medical education (CME) in the topic of prescribing practices, and pay an administrative penalty.
- 10. Dr. Hernandez neither admits nor denies the allegations set forth above but does not contest the entry of this order. This consent order and its requirements are entered into in the nature of compromise and as a settlement agreement.

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, 408.023, 408.0231, 413.002, 413.0511, 413.0512, 415.003, 415.023, 415.0035, 415.021, and 415.0215; 28 TEX. ADMIN. CODE §§ 180.22, and 180.26; and TEX. GOV'T CODE ANN. §§ 2001.051–2001.178.¹
- 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 § 180.26(h).
- 3. Pursuant to TEX. LAB. CODE ANN. § 415.021 and 28 TEX. ADMIN. CODE § 180.26, the division may impose sanctions against any person regulated by the division under the Texas Workers' Compensation Act.
- 4. Pursuant to TEX. LAB. CODE ANN. § 408.0231(c), the criteria for recommending or imposing sanction may include anything the commissioner considers relevant, including professional failure to practice medicine or provide health care, including chiropractic care, in an acceptable manner consistent with the public health, safety, and welfare.

¹ All references to the Texas Labor Code (TLC) and the Texas Administrative Code (TAC) that relate to the findings of fact regarding violations, as set forth in this consent order, are those that were in effect when the violations occurred. Other TLC and TAC references related to jurisdictional and/or procedural issues cite current law.

5. Pursuant to TEX. LAB. CODE ANN. § 408.0231(c), Dr. Hernandez failed to practice medicine or provide health care in an acceptable manner consistent with the public health, safety, and welfare when administered unreasonable treatment for chronic pain management .
6. Pursuant to TEX. LAB. CODE ANN. § 415.003(2), a health care provider commits an administrative violation if the person administers improper, unreasonable, or medically unnecessary treatment or services.
7. Dr. Hernandez committed administrative violations pursuant to TEX. LAB. CODE ANN. § 415.003(2) when he administered unreasonable treatment for chronic pain management treatment and when he ordered treatments and/or diagnostic testing without appropriately documenting justification.
8. Pursuant to TEX. LAB. CODE ANN. § 415.003(5), a health care provider commits an administrative violation if the person violates a commissioner rule.
9. Pursuant to TEX. LAB. CODE ANN. § 415.003(5), Dr. Hernandez committed administrative violations when he violated rule 28 TEX. ADMIN. CODE § 180.22.
10. Pursuant to 28 TEX. ADMIN. CODE § 180.22(c), the treating doctor is the doctor primarily responsible for the efficient management of health care and for coordinating the health care for an injured employee's compensable injury. The treating doctor shall, except in the case of an emergency, approve or recommend all health care reasonably required that is to be rendered to the injured employee including, but not limited to, treatment or evaluation provided through referrals to consulting and referral doctors or other health care providers and maintain the efficient utilization of health care.
11. Dr. Hernandez violated 28 TEX. ADMIN. CODE § 180.22(c) when he ordered treatments and/or diagnostic testing without appropriately documenting justification.

ORDER


It is ORDERED that 180 days after the date of this consent order, Arthur S. Hernandez, M.D., agrees to no longer practice before the division. After the 180 days, Arthur S. Hernandez, M.D. must not participate in treating and/or examining injured employees, and/or consulting with other physicians regarding the treatment of injured employees who are covered under the Texas workers' compensation system. Additionally, Arthur S. Hernandez, M.D. must not receive direct or indirect remuneration from the Texas workers' compensation system for any role related to the treatment or evaluation of injured employees.

Arthur S. Hernandez, M.D., is ORDERED to pay a \$5,000 administrative penalty. Payment is due within 90 days from the date of this Order. Payment must be paid by company check, cashier's check, or money order made payable to the "State of Texas" and mailed to the Texas Department of Insurance, Compliance Division-DWC, MC-9999, P.O. Box 149104, Austin, Texas 78714-9104.



W. Ryan Brannan
Commissioner of Workers' Compensation

Approved as to Form and Content:



Toya Lutz
Staff Attorney, Compliance Division
Texas Department of Insurance

