

No. DWC - 11 - 0027

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

Date: MAR 03 2011

Subject Considered:

MICHAEL S. BUMAGIN, M.D.
7100 Oakmont Blvd., Suite 107
Fort Worth, TX 76132-3911

CONSENT ORDER
DISCIPLINARY ACTION
TDI ENFORCEMENT FILE NO. 58603

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 Michael S. Bumagin, M.D. ("Dr. Bumagin"). The Texas Department of Insurance, Division of Workers' Compensation Staff ("Division Staff") alleges that Dr. Bumagin 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 Dr. Bumagin 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 § 180.26.

JURISDICTION

The Commissioner of Workers' Compensation has jurisdiction over this matter pursuant to TEX. LAB. CODE ANN. §§ 401.011, 402.001, 402.00111, 402.00114, 402.00116, 402.00128, 402.072, 408.0041, 408.0231, 408.123, 408.124, 408.125, 408.1225, 413.044, 414.002, 414.003, 415.003, 415.021, and 415.023; and 28 TEX. ADMIN. CODE §§ 126.7, 130.1, 130.3, 180.3, 180.8, 180.21, 180.22, 180.23, and 180.26, and TEX. GOV'T CODE ANN. §§ 2001.051–2001.178.

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WAIVER

Dr. Bumagin 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. Dr. Bumagin 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:

1. Dr. Bumagin holds Texas Medical License No. D5695, which was issued on June 24, 1969.
2. Dr. Bumagin is a designated doctor in the Texas Workers' Compensation system and was last certified to assign Impairment Ratings on October 26, 2009.
3. Pursuant to 28 TEX. ADMIN. CODE § 130.1(a)(3), a doctor authorized to certify MMI, determine whether permanent impairment exists, and assign an impairment rating and who does, shall be referred to as the "certifying doctor."
4. Pursuant to TEX. LAB. CODE ANN. § 408.0041(a)–(b), a designated doctor 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.
5. Pursuant to TEX. LAB. CODE ANN. §§ 408.123 and 408.124 and 28 TEX. ADMIN. CODE § 130.1(c)(2), the doctor who certifies that an injured employee has reached Maximum Medical Improvement (MMI) shall assign an impairment rating in accordance with the appropriate edition of the American Medical Association Guides to the Evaluation of Permanent Impairment (AMA Guides).

Medical Quality Review 10-IR-006

6. The Division's Medical Advisor (whose duties are defined at TEX. LAB. CODE ANN. § 413.0511) and Medical Quality Review Panel (as established pursuant to TEX. LAB. CODE ANN. § 413.0512) conducted a medical quality review of six cases in which Dr. Bumagin conducted designated doctor examinations. The

findings contained in the Medical Quality Review form the evidentiary basis for this action.

7. The quality review evaluated Dr. Bumagin's performance as a Designated Doctor and the accuracy of his Impairment Rating assignments and certifications of Maximum Medical Improvement (MMI) in accordance with the appropriate edition of the AMA Guides.
8. Medical Quality Review Panel Findings:
 - a. Dr. Bumagin addressed issues not described in the DD Appointment Order (EES-14) in six cases;
 - b. Dr. Bumagin assigned MMI dates without sufficient justification or documentation in five cases; and,
 - c. Dr. Bumagin failed to follow the AMA Guides resulting in inaccurate Impairment Ratings in six cases.

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. §§ 401.011, 402.001, 402.00111, 402.00114, 402.00116, 402.00128, 402.072, 408.0041, 408.0231, 408.123, 408.124, 408.125, 408.1225, 413.044(a)(1), 414.002, 414.003, 415.003, 415.021, and 415.023; and 28 TEX. ADMIN. CODE §§ 126.7, 130.1, 130.3, 180.3, 180.8, 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 § 180.26.
3. Dr. Bumagin 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. Pursuant to TEX. LAB. CODE ANN. § 408.0231(e), the commissioner shall act on a recommendation by the medical advisor and, after notice and the opportunity for a hearing, may impose sanctions on a doctor.

5. Pursuant to TEX. LAB. CODE ANN. § 408.0231, the criteria for imposing sanctions on a doctor is anything the Commissioner of Worker's Compensation considers relevant, including findings that the doctor's diagnoses or treatments are substantially different from those the commissioner finds to be fair or reasonable or for the professional failure to practice medicine or provide health care in an acceptable manner consistent with the public health, safety, and welfare.
6. Pursuant to TEX. LAB. CODE ANN. § 408.0231 and 28 TEX. ADMIN. CODE § 180.26, the Commissioner of Workers' Compensation may impose a range of sanctions against any person regulated by the Division, which includes the authority to deprive a person of the right to practice before the Division, or of the right to receive remuneration under the Act.
7. Pursuant to TEX. LAB. CODE ANN. § 413.044(a)(1), in addition to or in lieu of an administrative penalty under TEX. LAB. CODE ANN. § 415.021 or a sanction imposed under TEX. LAB. CODE ANN. § 415.023, the commissioner may impose sanctions against a person who serves as a designated doctor under Chapter 408 who is determined by the division to be out of compliance with this subtitle or with rules adopted by the commissioner relating to medical policies, fee guidelines, and Impairment Ratings.
8. In addition to the grounds for issuing other sanctions against a doctor under 28 TEX. ADMIN. CODE § 180.26, the Commissioner shall delete or suspend a doctor from the Designated Doctor List, or otherwise sanction a designated doctor for noncompliance with requirements of 28 TEX ADMIN. CODE § 180.21 or if any of the following conduct occurs:
 - a. misrepresentation or omission of pertinent facts in medical evaluations and narrative reports;
 - b. submission of inaccurate or inappropriate reports as a pattern of practice due to insufficient examination and analysis of medical records;
 - c. other violation of applicable statutes or rules while serving as a designated doctor.
9. Pursuant to TEX. LAB. CODE ANN. § 415.021(a), in addition to any sanctions or other remedies authorized by the Act, the Commissioner may assess an administrative penalty, not to exceed \$25,000.00 per day per occurrence, against a person who commits an administrative violation.
10. Pursuant to TEX. LAB. CODE ANN. § 415.003(5)&(6), a health care provider, like a designated doctor, commits an administrative violation each time he or she fails to comply with a provision of this subtitle or if he or she violates a commissioner's rule.

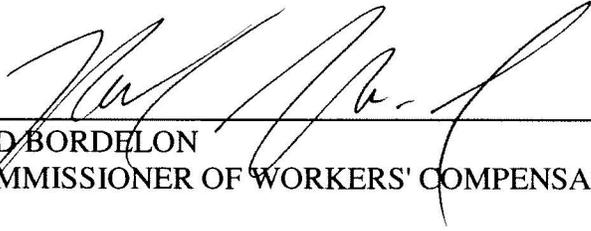
- a. Dr. Bumagin violated TEX. LAB. CODE ANN. §§ 408.123, 408.124, and 28 TEX. ADMIN. CODE § 130.1(c)(2), each time he failed to assign Impairment Ratings in accordance with the American Medical Association Guides to Permanent Impairment (“AMA Guides”).

Based on the Findings of Fact and Conclusions of Law above, the Commissioner of Workers' Compensation has determined that the appropriate disposition is the imposition of the following sanctions and full compliance with the terms of this Order.

IT IS THEREFORE ORDERED that thirty (30) days from the date of this order, Michael S. Bumagin, M.D. shall be removed from the Designated Doctor List and Michael S. Bumagin, M.D. is henceforth deprived of the right to practice before the Division as a Designated Doctor.

IT IS FURTHER ORDERED that thirty (30) days from the date of this order, Michael S. Bumagin, M.D.'s maximum medical improvement and Impairment Rating certification shall be revoked and Michael S. Bumagin, M.D. is henceforth deprived of the right to certify maximum medical improvement and/or assign Impairment Ratings.

IT IS ALSO ORDERED by the Commissioner of Workers' Compensation that should Michael S. Bumagin, M.D. fail to comply with the terms of this Order, Michael S. Bumagin, M.D. will have committed an additional administrative violation and his failure to comply with the terms of this Order may subject Michael S. Bumagin, M.D. 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

FOR THE STAFF:



Kirsten Morgan
Staff Attorney, Enforcement Division
Texas Department of Insurance

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AGREED, ACCEPTED, and EXECUTED on this 24th day of February, 2011 by:


Signature of Michael S. Bumagin, M.D.

