

No. DWC - 10 - 0004

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

Date: FEB 16 2010

Subject Considered:

ALEJANDRO LOPEZ, M.D.
201 Mariposa Drive
Alice, Texas 78332

**CONSENT ORDER
DISCIPLINARY ACTION
TDI ENFORCEMENT FILE NO. 55825**

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 Alejandro Lopez, M.D. (Dr. Lopez). The Texas Department of Insurance, Division of Workers' Compensation Staff (Division Staff) alleges that Dr. Lopez 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. Lopez 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, 408.123, 414.002, 414.003, 415.003, 415.021, and 415.023; and 28 TEX. ADMIN. CODE §§ 126.7, 130.1, 130.2, 180.1, 180.2, 180.3, 180.5, 180.6, 180.7, 180.8, 180.10, 180.11; 180.12, 180.22, 180.23, and 180.26; and TEX. GOV'T CODE ANN. §§ 2001.051-2001.178.

DWC - 10 - 0004 WAIVER

Dr. Lopez 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. Lopez 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 – Treating 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. Dr. Lopez is a treating doctor.

**Certification of Maximum Medical Improvement and
Evaluation of Impairment Ratings**

5. 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.
6. 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.
7. 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.
8. 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.
9. In accordance with 28 TEX. ADMIN. CODE § 130.1(d)(3)(A)-(B), the Report of Medical Evaluation shall be filed with the insurance carrier by facsimile or electronic transmission; and the Report of Medical Evaluation shall be filed with the commission, the injured employee and the injured employee's representative by facsimile or electronic transmission if the doctor has been provided the recipient's facsimile number or email address; otherwise, the report shall be filed by other verifiable means.
10. 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.

Division Audit of Dr. Lopez

11. Dr. Lopez was audited by the Division on January 20, 2009. The purpose of the audit was to determine if Dr. Lopez was timely in filing the DWC Form-69 with the insurance carrier and the method by which the report was submitted to the insurance carrier. The audit evaluated Dr. Lopez's performance during a six month period from January 1, 2008 through June 30, 2008.
12. Dr. Lopez filed 46 DWC Form-69's, which were subject to the audit, during the period of review.
13. Of the 46 DWC Form-69's identified, zero were timely sent to the insurance carrier.
14. Of the seven 46 DWC Form-69's identified, zero were sent to the insurance carrier via facsimile or electronic transmission.
15. Dr. Lopez's compliance rate for filing forms in a timely manner was 0.00%.
16. Dr. Lopez's compliance rate for filing forms by the proper method was 0.00%.

Aggravating Factors

Warning Letters

17. On or about April 2, 1998, the Division issued a warning letter to Dr. Lopez for failing to timely file a DWC Form-69.

Performance Based Oversight (PBO)

18. Dr. Lopez was identified as a poor tier performer in the 2007 PBO assessment.
19. Dr. Lopez was identified as a poor tier performer in the 2009 PBO assessment.

Mitigating Factors

20. In lieu of an administrative penalty, Dr. Lopez agrees to withdraw from the Workers' Compensation system effective thirty (30) days after the entry of this ORDER.

21. Dr. Lopez agrees to cease and desist from performing or billing for services rendered effective thirty (30) days after the entry of this ORDER.

Other Considerations

22. Dr. Lopez 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.
23. The complaints filed against Dr. Lopez 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.
24. 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 Dr. Lopez 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, 408.123, 414.002, 414.003, 415.003, 415.021, and 415.023; and 28 TEX. ADMIN. CODE §§ 126.7, 130.1, 130.2, 180.1, 180.2, 180.3, 180.5, 180.6, 180.7, 180.8, 180.10, 180.11; 180.12, 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. Dr. Lopez 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, in addition to any sanction, administrative penalty, or other remedy authorized by this subtitle, the Commissioner of Workers' Compensation may assess an

administrative penalty against a person who commits an administrative violation.

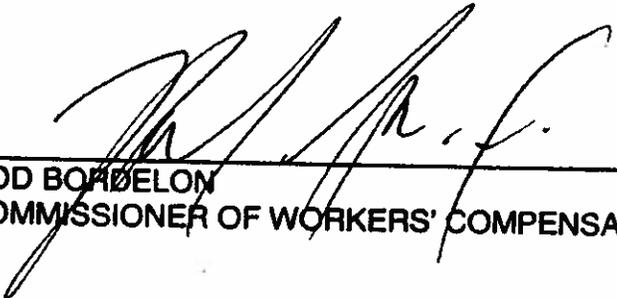
5. In accordance with TEX. LAB. CODE ANN. § 415.023(a), a person who commits an administrative violation under Section 415.001, 415.002, 415.003, or 415.0035 as a matter of practice is subject to an applicable rule adopted under TEX. LAB. CODE ANN. § 415.023(b) in addition to the penalty assessed for the violation.
6. In accordance with 28 TEX. ADMIN. CODE § 180.26(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.
7. In accordance with TEX. LAB. CODE ANN. § 415.003(5), a health care provider commits an administrative violation each time he or she violates a commissioner's rule.
 - a. Dr. Lopez violated 28 TEX. ADMIN. CODE § 130.1(d)(2), each time he failed to file the DWC Form-69 in a timely manner.
 - b. Dr. Lopez violated 28 TEX. ADMIN. CODE § 130.1(d)(3)(A) each time he failed to file DWC Form-69 with the carrier via facsimile or electronic submission.

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

IT IS THEREFORE ORDERED that Dr. Lopez withdraw from the Workers' Compensation system effective thirty (30) days after the entry of this ORDER.

IT IS FURTHER ORDERED that Dr. Lopez be shall cease and desist from performing or billing for services rendered effective thirty (30) days after the entry of this ORDER.

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

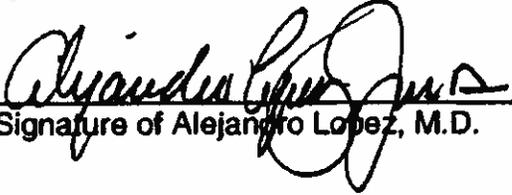


Terra Colvin Thomas
Staff Attorney, Enforcement Division
Texas Department of Insurance

DWC-10-0004

COMMISSIONER'S ORDER
Alejandro Lopez, M.D.; CTS # 55825
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AGREED, ACCEPTED, and EXECUTED on this 2nd day of February 2010 by:



Signature of Alejandro Lopez, M.D.

STATE OF TEXAS

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COUNTY OF JIM WELLS

BEFORE ME, Irma G. Vela, a notary public in and for the State of Texas, on this day personally appeared Alejandro Lopez JR. known to me or proven to me through personal knowledge to be the person whose name is subscribed to the foregoing instrument, 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 Alejandro Lopez, M.D. I am of sound mind, capable of making this statement, and personally acquainted with the facts stated in this Consent Order.
2. I have read the terms and conditions contained within this Consent Order, and I have knowingly and voluntarily entered into it.
3. I consent to the issuance and service of this Consent Order, and I am executing the same for the purposes and consideration described herein."

Alejandro Lopez JR.
Signature

Alejandro Lopez JR., M.D.
Typed/Printed Name

Given under my hand and seal of office this 2nd day of February, 2010.

(NOTARY SEAL)

Irma G. Vela
Notary Public, State of Texas
My commission expires: 8-20-2010

