

No. 2016 4675

OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF WORKERS' COMPENSATION

Date: SEP 23 2016

Subject Considered:

GARY L. PRITCHETT, D.C.
1313 E. Franklin Street
Hillsboro, TX 76645-2621

CONSENT ORDER
TDI ENFORCEMENT FILE NOS. 6901 and 9077

General remarks and official action taken:

The commissioner of workers' compensation considers whether disciplinary action should be taken against Gary L. Pritchett, D.C. (Dr. Pritchett).

WAIVER

Dr. Pritchett acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Dr. Pritchett 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. Pritchett holds Texas Doctor of Chiropractic License No. 06588, issued on January 16, 1995. Dr. Pritchett is a health care provider who was certified to perform designated doctor (DD) examinations in the Texas workers' compensation system. Dr. Pritchett's certification expired on July 3, 2015. Dr. Pritchett has a certification to certify maximum medical improvement (MMI) and to assign impairment ratings (IR). Dr. Pritchett's MMI and IR certifications expire on July 3, 2017.
2. Dr. Pritchett was not classified in the 2007, 2009, 2011, 2013, or 2015 Performance Based Oversight assessments.

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Maximum Medical Improvement (MMI) and Impairment Rating (IR) Determination

3. Dr. Pritchett performed a DD examination on one injured employee on February 9, 2012.
4. In Dr. Pritchett's report of medical evaluation and corresponding narrative report, he certified an MMI date of February 9, 2012, the date of the DD examination. Dr. Pritchett failed to document an explanation of the analysis performed to find whether MMI was reached.
5. Dr. Pritchett failed to document that he performed a neurological examination; therefore, he failed to perform a complete medical examination to determine MMI.
6. Dr. Pritchett certified February 9, 2012, as the injured employee's MMI date, from which he assigned a 44 percent whole person IR. However, February 9, 2012, was not the earliest date after which, based on reasonable medical probability, the injured employee's further material recovery from all lasting improvement to an injury could no longer reasonably be anticipated. Therefore, Dr. Pritchett failed to assign an IR on the injured employee's condition as of the injured employee's MMI date.
7. In assigning a 44 percent whole person IR, Dr. Pritchett failed to provide a description and explanation of specific clinical findings related to the cervical spine impairment, and a description of how his findings related to and compared with the criteria described in the applicable chapter of the *American Medical Association, Guides to the Evaluation of Permanent Impairment, Fourth Edition* (AMA Guides). Dr. Pritchett also relied on digitized x-ray reports, which is not consistent with the requirements in the AMA Guides.
8. Dr. Pritchett failed to explain his inability to obtain required measurements and failed to refer the injured employee for testing. Dr. Pritchett relied on digitized x-ray reports from x-rays taken at the initial evaluation with the treating doctor on October 12, 2011, to determine IR.
9. Dr. Pritchett's IR was substantially different from what the commissioner finds to be fair and reasonable. Dr. Pritchett assigned a 44 percent whole person impairment. The AMA Guides in conjunction with the record and examination do not support a 44 person impairment rating.

Designated Doctor Examination Site

10. Dr. Pritchett failed to perform DD examinations in facilities that were properly equipped for medical examination or other similar health care services and that ensured safety, privacy, and accessibility. Dr. Pritchett also violated commissioner's orders that required him to perform the DD examinations at the address indicated on these orders that were issued.

- a. Dr. Pritchett was ordered to perform one DD examination at a specified location in Edinburg, Texas on January 9, 2014. Instead of conducting the examination at the specified location, Dr. Pritchett conducted the examination at the injured employee's home. Part of the examination was conducted in his vehicle and another portion was conducted at her residence.
- b. Dr. Pritchett was ordered to perform five DD examinations at a specified location in El Paso, Texas on February 6, 2014. The specified examination site was locked at the times of the examinations, so Dr. Pritchett performed four of the five examinations in his vehicle and/or the parking lot outside his vehicle in front of the examination site. For the fifth examination on that same day, Dr. Pritchett transported the injured employee in his vehicle to another nearby clinic that was not the commissioner ordered examination address, which would have required prior approval from the division.

Designated Doctor Physical Examination

11. Dr. Pritchett performed a DD examination on one injured employee on October 8, 2014, for the purpose of determining extent of injury.
12. Dr. Pritchett failed to follow general procedures for the DD examination.
13. Dr. Pritchett failed to document that he performed a physical examination of the injured employee as required by the DD rules.
14. Dr. Pritchett neither admits nor denies the allegations set forth in this consent order, 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 law¹:

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, 408.0231, 413.044, 413.0511, 415.021, and 415.0215; 28 TEX. ADMIN. CODE §§ 127.5, 127.200, 127.210, 130.1, and 180.26; and TEX. GOV'T CODE ANN. §§ 2001.051 – 2001.178.

¹ All references to the Texas Labor Code and the Texas Administrative Code that relate to the findings of fact regarding violations, as set forth in this consent order, are those that were in effect in 2012 and beyond when the violations occurred.

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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. § 415.0215 and 28 TEX. ADMIN. CODE § 180.26, the sanctions the commissioner may impose include depriving a person of the right to practice before the division or of the right to receive remuneration under the Act.
4. Pursuant to TEX. LAB. CODE ANN. § 415.021(a), a person commits an administrative violation if the person violates, fails to comply with, or refuses to comply with this subtitle or a rule, order, or decision of the commissioner. 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. The administrative penalty shall not exceed \$25,000 per day per occurrence. Each day of noncompliance constitutes a separate violation.
5. Pursuant to TEX. LAB. CODE ANN. § 415.021(a), Dr. Pritchett committed an administrative violation when he failed to comply with the commissioner's order in regard to the site for the DD examinations.
6. Pursuant to TEX. LAB. CODE ANN. § 413.044, in addition to or in lieu of an administrative penalty under Section 415.021 or a sanction imposed under Section 415.023, the commissioner may impose sanctions against a person who, serves as a designated doctor under Chapter 408 who after an evaluation conducted under Section 413.002(b), is determined by the division to be out of compliance with this subtitle or with rule adopted by the commissioner relating to the quality of decision made under § 408.0041. Sanctions may include revocation of certification for a designated doctor on the division list of designated doctors; or restrictions on the reviews made by the person as a designated doctor.
7. Pursuant to 28 TEX. ADMIN. CODE § 127.210(a)(4), in addition to the grounds for issuing sanctions against a doctor under § 180.26 of this title, the commissioner may revoke or suspend a designated doctor's certification or otherwise sanction a designated doctor for noncompliance with requirements of this chapter or for any of the following: misrepresentation or omission of pertinent facts in medical evaluation and narrative reports.
8. Pursuant to 28 TEX. ADMIN. CODE § 130.1(d)(1)(B)(iii), the Report of Medical Evaluation includes an attached narrative report. The narrative report must include findings of the certifying examination, including both normal and abnormal findings related to the compensable injury and an explanation of the analysis performed to find whether MMI was reached.

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9. Dr. Pritchett violated 28 TEX. ADMIN. CODE § 130.1(d)(1)(B)(iii), when he certified a MMI date of February 9, 2012, but failed to document an explanation of the analysis performed to find whether MMI was reached in his narrative report.
10. Pursuant to 28 TEX. ADMIN. CODE § 130.1(b)(4)(B), to certify MMI the certifying doctor shall perform a complete medical examination of the injured employee for the explicit purpose of determining MMI (certifying examination).
11. Dr. Pritchett violated 28 TEX. ADMIN. CODE § 130.1(b)(4)(B) when he did not perform a necessary neurological examination to determine MMI.
12. Pursuant to 28 TEX. ADMIN. CODE § 130.1(c)(3), assignment of an impairment rating for the current compensable injury shall be based on the injured employee's condition on the MMI date considering the medical record and the certifying examination.
13. Dr. Pritchett violated 28 TEX. ADMIN. CODE § 130.1(c)(3), when he certified February 9, 2012, as the injured employee's MMI date, and he assigned a 44 percent IR. However, February 9, 2012, was not the earliest date after which, based on reasonable medical probability, the injured employee's further material recovery from all lasting improvement to an injury could no longer reasonably be anticipated. Therefore, Dr. Pritchett failed to assign an IR on the injured employee's condition as of the injured employee's MMI date.
14. Pursuant to 28 TEX. ADMIN. CODE § 130.1(c)(3)(D) and (F), the doctor assigning the impairment rating shall compare the results of the analysis with the impairment criteria and provide a description and explanation of how the findings relate to and compare with the criteria described in the applicable chapter of the AMA Guides. The doctor's inability to obtain required measurements must be explained. The doctor shall also be responsible for referring the injured employee to another doctor or health care provider for testing if additional medical information is required.
15. Dr. Pritchett violated 28 TEX. ADMIN. CODE § 130.1(c)(3)(D) and (F), when he failed to provide a description and explanation of specific clinical findings related to the cervical spine impairment, and a description of how his findings related to and compared with the criteria described in the applicable chapter of the AMA Guides when he assigned a 44 percent whole person IR. Dr. Pritchett also relied on digitized x-ray reports, which is not consistent with the requirements in the AMA Guides. Furthermore, Dr. Pritchett failed to explain his inability to obtain required measurements and failed to refer the injured employee for testing. Dr. Pritchett relied on digitized x-ray reports from x-rays taken at the initial evaluation with the treating doctor on October 12, 2011, to determine IR.
16. Pursuant to TEX. LAB. CODE ANN. § 408.0231(c)(3), the criteria for recommending or imposing sanctions may include anything the commissioner considers relevant, including evidence from the division's medical records that the doctor's charges, fees, diagnosis, treatments, evaluations, or impairment ratings are substantially different from those the

commissioner finds to be fair and reasonable based on either a single determination or a pattern of practice.

17. Pursuant to TEX. LAB. CODE ANN. § 408.0231(c)(3), the commissioner may delete Dr. Pritchett from the list or impose sanctions against Dr. Pritchett for his impairment rating that is substantially different from those the commissioner finds to be fair and reasonable. Dr. Pritchett's IR was substantially different from what the commissioner finds to be fair and reasonable. Dr. Pritchett assigned a 44 percent whole person impairment. The AMA Guides in conjunction with the record and examination results supports a substantially lower IR.
18. Pursuant to 28 TEX. ADMIN. CODE § 127.200(a), all designated doctors shall perform designated doctor examinations in a facility currently used and properly equipped for medical examinations or other similar health care services that ensures safety, privacy, and accessibility for injured employees and injured employees' medical records and other records containing confidential claim information.
19. Dr. Pritchett violated 28 TEX. ADMIN. CODE § 127.200(a) when he performed four examinations in his vehicle and/or the parking lot outside his vehicle in front of the commissioner's ordered examination site and one at the injured employee's residence and in his car.
20. Pursuant to 28 TEX. ADMIN. CODE § 127.10(b), the DD shall perform a complete physical examination of the injured employee.
21. Dr. Pritchett violated 28 TEX. ADMIN. CODE § 127.10(b) when he failed to document that he performed a physical examination of the injured employee.

ORDER

Gary L. Pritchett, D.C. is ORDERED to not apply for certification of the division's designated doctor list for a period of three years from the date this order is signed by the Commissioner of Workers' Compensation. If Gary L. Pritchett, D.C. applies for certification of the division's designated doctor list during the three year period, the division will deny the application.

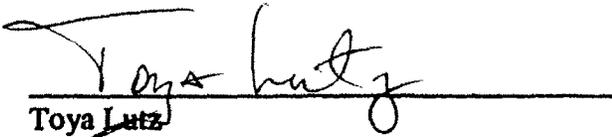


W. Ryan Branigan
Commissioner of Workers' Compensation

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Approved as to Form and Content:

A handwritten signature in black ink, appearing to read "Toya Lutz", is written over a horizontal line.

Toya Lutz
Staff Attorney, DWC Enforcement
Texas Department of Insurance

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AFFIDAVIT

STATE OF TEXAS §
 §
COUNTY OF Hill §

Before me, the undersigned authority, personally appeared the affiant, Gary L. Pritchett, D.C., who being by me duly sworn, deposed as follows:

"My name is Gary L. Pritchett, D.C. I am of sound mind, capable of making this statement, and have personal knowledge of these facts, which are true and correct.

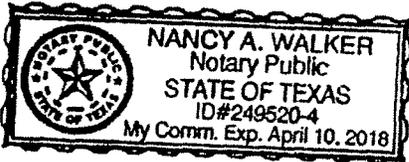
I have knowingly and voluntarily entered into the foregoing consent order and agree with and consent to the issuance and service of the same by the commissioner of workers' compensation of the State of Texas."



Affiant

SWORN TO AND SUBSCRIBED before me on Sept 15, 2016.

(NOTARY SEAL)





Signature of Notary Public

Nancy A. Walker

Printed Name of Notary Public