

No. **DWC-12-0069**

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

APR 30 2012

Date: _____

Subject Considered:

DAVID P. SCHWARTZ, D.O.
1907 E. Southmore
Pasadena, Texas 77502

CONSENT ORDER
DISCIPLINARY ACTION
TDI ENFORCEMENT FILE NO. 60593

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 David P. Schwartz, D.O. (Dr. Schwartz). The Texas Department of Insurance, Division of Workers' Compensation Staff (Division Staff) alleges that Dr. Schwartz 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. Schwartz 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(h).

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(e), 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 §§ 126.7¹, 130.1, 130.3, 180.21, 180.22, 180.23, and 180.26, and TEX. GOV'T CODE ANN. §§ 2001.051–2001.178.

WAIVER

Dr. Schwartz 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. Schwartz 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.

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FINDINGS OF FACT

The Commissioner of Workers' Compensation makes the following findings of fact:

1. Dr. Schwartz holds Texas Medical License No. J2316, which was issued on November 14, 1992.
2. Dr. Schwartz was a designated doctor in the Texas workers' compensation system. Dr. Schwartz's last certification to assign Impairment Ratings expired on April 3, 2011.
3. Pursuant to TEX. LAB. CODE ANN. § 408.0041(a), 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,

¹ 28 TEX. ADMIN. CODE § 126.7(f) was repealed and re-codified at 28 TEX. ADMIN. CODE § 127.5(e) effective February 1, 2011, but was in effect as of the date the violation occurred.

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.

4. In accordance with TEX. LAB. CODE ANN. § 408.0041(a), at the request of an insurance carrier or an employee, or on the commissioner's own order, the commissioner may order a medical examination to resolve any question about: (1) the impairment caused by the compensable injury; (2) the attainment of maximum medical improvement; (3) the extent of the employee's compensable injury; (4) whether the injured employee's disability is a direct result of the work-related injury; (5) the ability of the employee to return to work; or (6) issues similar to those described by Subdivisions (1)-(5).
5. In accordance with TEX. LAB. CODE ANN. § 408.0041(b), a medical examination requested under Subsection (a) shall be performed by the next available doctor on the division's list of designated doctors whose credentials are appropriate for the issue in question and the injured employee's medical condition as determined by commissioner rule.
6. In accordance with 28 TEX. ADMIN. CODE § 126.7(f), if the designated doctor is unable to perform the exam as scheduled, the designated doctor may reschedule the examination within 21 days of the original examination. If the examination cannot be rescheduled within 21 days, the designated doctor shall notify the Division and the Division shall select a new designated doctor.
7. In accordance with 28 TEX. ADMIN. CODE § 130.1(d)(2), the Report of Medical Evaluation (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 required medical information.
8. Dr. Schwartz was ordered by the Division to perform a designated doctor exam on March 30, 2010.
9. Dr. Schwartz failed to perform a Division-ordered designated doctor examination.
10. Dr. Schwartz failed to notify the Division that he was not available to perform the examination, and another physician performed the examination in his place.
11. Additionally, Dr. Schwartz failed to ensure that a copy of the DWC Form-69 was sent to the injured employee.

12. At the time of the appointment, Dr. Schwartz was contracted with ACME to provide administrative services. Dr. Schwartz has since terminated his contract with ACME.
13. Dr. Schwartz agrees that he will not apply to be reinstated to the Division's Designated Doctor List.
14. This 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 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. §§ 401.011, 402.001, 402.00111, 402.00114, 402.00116, 402.00128, 402.072, 408.0041, 408.0231(e), 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, 180.21, 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(h).
3. Dr. Schwartz 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. The criteria for recommending or imposing sanctions on a doctor may include anything the Commissioner 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.

DWC - 12 - 0069

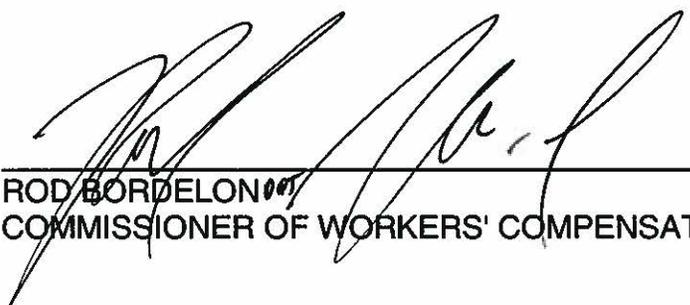
6. Pursuant to TEX. LAB. CODE ANN. § 408.0231 and 28 TEX. ADMIN. CODE §180.26, the Commissioner of Workers' Compensation may impose a range of sanctions against any person regulated by the Division, which includes the authority to place restrictions on appointments or reviews, and mandatory participation in training classes or other courses as established or certified by the division.
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 (DDL), or otherwise sanction a designated doctor for noncompliance with requirements of 28 TEX ADMIN. CODE § 180.21, or for any 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.
11. Dr. Schwartz failed to perform a Division-ordered designated doctor examination as required by TEX. LAB. CODE ANN. § 408.0041 and 28 TEX. ADMIN. CODE § 126.7(f).
12. Dr. Schwartz failed to send a copy of the DWC Form-69 to the injured employee as required by 28 TEX. ADMIN. CODE § 130.1(d)(2).

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.

DWC - 12 - 0069

IT IS THEREFORE ORDERED that David P. Schwartz, D.O. shall not apply for reinstatement to the Division's designated doctor list. Should Dr. Schwartz attempt to apply for reinstatement to the Division's designated doctor list, his application will be summarily denied.

IT IS ALSO ORDERED by the Commissioner of Workers' Compensation that should David P. Schwartz, D.O. fail to comply with the terms of this Order, David P. Schwartz, D.O. will have committed an additional administrative violation and his failure to comply with the terms of this Order may subject David P. Schwartz, D.O. 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 Thomas
Staff Attorney, Compliance Division
Texas Department of Insurance

AGREED, ACCEPTED, and EXECUTED:

By: [Signature]
David P. Schwartz, D.O.

AFFIDAVIT

STATE OF Texas §
COUNTY OF Harris §
§

Before me, the undersigned authority, personally appeared David P. Schwartz, D.O., who being by me duly sworn, deposed as follows:

"My name is David P. Schwartz, D.O. I am of sound mind, capable of making this statement, and have personal knowledge of these facts which are true and correct.

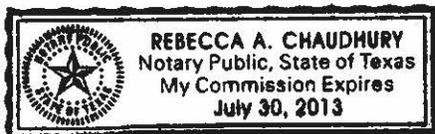
I have knowingly and voluntarily entered into the foregoing Consent Order and agree with and consent to the issuance and service of the same by the Commissioner of Insurance of the State of Texas."

[Signature]
Affiant

March 27,

SWORN TO AND SUBSCRIBED before me on _____, 2012.

(NOTARY SEAL)



Rebecca A Chaudhury
Signature of Notary Public

Rebecca A. Chaudhury
Printed Name of Notary Public