

No. DWC - 10 - 0102

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

Date: NOV 12 2010

Subject Considered:

DAVID ALLEN DURKOP, D.C.
3800 Tanglewilde, #301
Houston, Texas 77063

CONSENT ORDER
DISCIPLINARY ACTION
TDI ENFORCEMENT FILE NO. 54049

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 Allen Durkop, D.C. (Durkop). The Texas Department of Insurance, Division of Workers' Compensation Staff (Division Staff) alleges that Durkop 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 Durkop 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, 408.021, 408.023, 408.0231, 413.0511, 414.002, 415.003, 415.021, and 415.023; 28 TEX. ADMIN. CODE §§ 180.22, 180.26, and 180.27; and TEX. GOV'T CODE ANN. §§ 2001.051-2001.178.

WAIVER

Durkop 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. Durkop 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. Durkop was licensed by the Texas Board of Chiropractic Examiners on August 13, 1993.
2. The Texas Board of Chiropractic Examiners currently lists Durkop, license number 6210, as active with no disciplinary history.
3. Pursuant to TEX. LAB. CODE ANN. § 401.011(21), a health care practitioner is an individual who is licensed to provide or render and provides or renders health care. A health care practitioner is also a non-licensed individual who provides or renders health care under the direction or supervision of a doctor.
4. Pursuant to TEX. LAB. CODE ANN. § 401.011(42), a treating doctor is defined as a doctor who is primarily responsible for the employee's health care for an injury.
5. Pursuant to 28 TEX. ADMIN. CODE §180.22(d), the consulting doctor is a doctor who examines an employee or the employee's medical record in response to a request from the treating doctor, the designated doctor, or the Division. The consulting doctor can become a referral doctor if the doctor begins to prescribe or provide health care to an employee.
6. Pursuant to 28 TEX. ADMIN. CODE §180.22(e), the referral doctor is a doctor who examines and treats an employee in response to a request from the treating doctor.
7. Pursuant to 28 TEX. ADMIN. CODE § 180.22(f), the Required Medical Examination ("RME") doctor is a doctor who examines the employee's medical condition in response to a request from the carrier or the Division pursuant to TEX. LAB. CODE ANN. §§408.004, 408.0041, or 408.151.
8. Pursuant to 28 TEX. ADMIN. CODE § 180.22(g), a peer reviewer is a health care provider who, at the insurance carrier's request, performs an administrative review of the health care of a workers' compensation claim.

9. Pursuant to TEX. LAB. CODE ANN. § 401.011(15), a designated doctor is defined as a doctor appointed by the mutual agreement of the parties or by the division to recommend a resolution of a dispute as to the medical condition of an injured employee.
10. Durkop is a health care practitioner who provides services to injured employees in the Workers' Compensation system as a treating, consulting, referral, RME, peer review and a designated doctor.

Health Care Provider Roles and Statutory Responsibilities

11. The Texas Workers' Compensation Act (Act) and rules promulgated by the Commissioner of Workers' Compensation (Rules) impose a duty on health care providers to provide treatment to injured employees in accordance with evidence-based medicine.
12. Pursuant to TEX. LAB. CODE ANN. § 401.011(18-a), "evidence-based medicine" means the use of the current best quality scientific and medical evidence formulated from credible scientific studies, including peer reviewed medical literature and other current scientifically based texts, and treatment and practice guidelines in making decisions about health care treatment of individual patients.
13. 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.
14. In accordance with TEX. LAB. CODE ANN. § 408.021(a)(1)-(3) and 28 TEX. ADMIN. CODE § 180.22(a)(1)-(3), health care providers are required to provide reasonable and necessary health care that cures or relieves the effects naturally resulting from the compensable injury; promotes recovery; and/or enhances the ability of the employee to return to or retain employment.

OMA's Findings and Recommendation

15. The Division of Workers' Compensation's Office of the Medical Advisor (OMA) and the Medical Quality Review Panel (MQRP) conducted a medical quality review of health care provided by Durkop, Medical Quality Review #09-QR-002. The review of Durkop's treatments was performed by doctors on the Division's MQRP under TEX. LAB. CODE ANN. § 413.0512 at the direction of the Division's Medical Advisor.
16. On January 7, 2009, a preliminary report was sent to Durkop. In the letter he was provided an opportunity to respond to OMA's findings and was encouraged to

review the opinions for discrepancies or errors and register agreement or disagreement with the findings.

17. Durkop filed a response to the preliminary report on February 5, 2009.
18. The Office of the Medical Advisor issued a final report on February 25, 2009, finding:
 - a. six instances of providing diagnoses that were not accurate and/or supported by the history, symptoms, objective physical and diagnostic findings;
 - b. five instances of providing treatment and/or testing that were not consistent with evidence-based medicine recommendations and/or were not adequately documented to justify the treatments and/or testing; and,
 - c. five instances of failing to promote timely and appropriate return to work consistent with evidence-based lost time guidelines.
19. The Office of the Medical Advisor recommended that Durkop's ability to participate in the workers' compensation system as a treating, consulting, and/or referral health care practitioner be suspended.

Mitigating Factors

20. Durkop has no prior disciplinary history for this type of violation.
21. Durkop agrees to voluntarily withdraw from practicing in the Texas Workers' Compensation system as a network and non-network treating, consulting, and/or referral doctor.
22. Durkop agrees only to participate in the Texas Workers' Compensation system as a designated doctor, RME doctor, and/or peer review doctor.
23. Durkop agrees that on or after March 1, 2014, he may apply for restoration and/or reinstatement of his privileges by applying in the form and manner prescribed by the Division.

Other Considerations

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 Durkop of resolving this dispute through administrative or judicial proceedings.

25. By entering into this Consent Order, Durkop makes no admission of liability or wrongdoing. Durkop agrees to enter into this Consent 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. §§ 402.001, 402.00111, 402.00114, 402.00116, 402.00128, 402.072, 408.021, 408.023, 408.0231, 413.0511, 414.002, 415.003, 415.021, and 415.023; 28 TEX. ADMIN. CODE §§ 180.22, 180.26, and 180.27; 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. Durkop 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 Sections 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. Rules adopted under TEX. LAB. CODE ANN. § 408.0231(b)(2) are in addition to, and do not affect, the rules adopted under TEX. LAB. CODE ANN. § 415.023(b). See TEX. LAB. CODE ANN. § 408.0231(c).
7. Durkop failed to comply with TEX. LAB. CODE ANN. § 415.003(4), by providing treatment that did not comport with the Divisions' treatment guidelines and/or with the principles of evidence based medicine as defined in TEX. LAB. CODE ANN. § 401.011(18-a).

8. Durkop violated 28 TEX. ADMIN. CODE § 137.10(a), by failing to promote a timely, appropriate return to work consistent with the MDA, an evidence based lost time guideline.
9. Durkop failed to comply with 28 TEX. ADMIN. CODE § 180.22(a)(1)-(3), because he failed to enhance the injured workers' ability to return to work, which, in accordance with TEX. LAB. CODE ANN. § 415.003(5), is an administrative violation.
10. The Commissioner of Worker's Compensation may impose sanctions on a doctor for the reasons listed in TEX. LAB. CODE ANN. § 408.0231 and 28 TEX. ADMIN. CODE § 180.26, reasons which include evidence that the doctor's diagnoses or treatments are substantially different from those the commissioner finds to be fair and 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.
11. Pursuant to TEX. LAB. CODE ANN. §§ 402.072, 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, or restrictions on appointments.

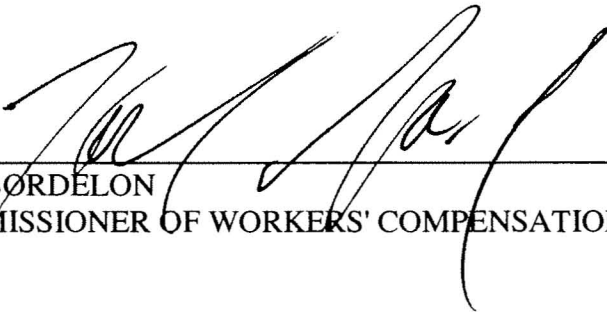
Based on the Findings of Fact and Conclusions of Law above, the Commissioner of Workers' Compensation has determined that the appropriate disposition is the imposition of the following sanctions and full compliance with the terms of this Order.

IT IS THEREFORE ORDERED that, upon the execution date of this order, David Allen Durkop, D.C. shall voluntarily withdraw from practicing in the Texas Workers' Compensation system as a network and non-network treating, consulting, and/or referring doctor. David Allen Durkop, D.C. may continue to act as a designated doctor, RME doctor, and/or peer review doctor.

IT IS FURTHER ORDERED that on or after March 1, 2014, David Allen Durkop, D.C. may apply for restoration and/or reinstatement of his privileges by applying in the form and manner prescribed by the Division.

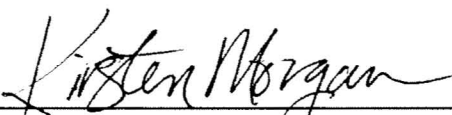
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IT IS ALSO ORDERED by the Commissioner of Workers' Compensation that should David Allen Durkop, D.C. fail to comply with the terms of this Order, David Allen Durkop, D.C. will have committed an additional administrative violation and his failure to comply with the terms of this Order may subject David Allen Durkop, D.C. 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 20 day of October, 2010 by:



Signature of David Allen Durkop, D.C.

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STATE OF TEXAS §
 §
COUNTY OF HARRIS §

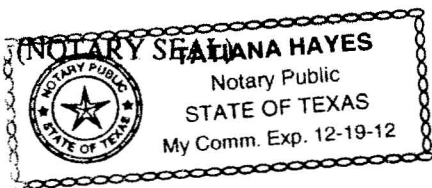
BEFORE ME, Tatiana Hayes, a notary public in and for the State of Texas, on this day personally appeared David Allen Durkop, known to me or proven to me through TX DL 05067162 to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, who being by me duly sworn, deposed as follows:

1. "My name is David Allen Durkop, D.C. 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."

David Allen Durkop, D.C.
Signature

David Allen Durkop
Typed/Printed Name

Given under my hand and seal of office this 20 day of October, 2010.



Tatiana Hayes
Notary Public, State of Texas
My commission expires: 12-19-12