

No. 2985

OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF WORKERS' COMPENSATION

Date: JAN 31 2014

Subject Considered:

ROBERT TYTAN MYLES, M.D.
2008 L. Don Dodson Drive, Suite 110
Bedford, TX 76021-1844

CONSENT ORDER
TDI ENFORCEMENT FILE NO. 2309

General remarks and official action taken:

The commissioner of workers' compensation considers whether disciplinary action should be taken against Robert Tytan Myles, M.D. (Dr. Myles).

WAIVER

Dr. Myles acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Dr. Myles 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. Myles is a physician licensed by the State of Texas on November 16, 1996. He holds Texas Medical Board License No. K1579.
2. Dr. Myles is a health care provider in the Texas workers' compensation system.
3. Dr. Myles was not classified for Performance Based Oversight (PBO) in the 2007, 2009, 2011, or 2013 PBO assessments.

4. Based on information developed from an audit of spinal surgeries conducted in fiscal year 2012, the division's Medical Advisor (whose duties are defined at TEX. LAB. CODE ANN. § 413.0511) and Medical Quality Review Panel (MQRP) (as established pursuant to TEX. LAB. CODE ANN. § 413.0512) conducted a medical quality review (MQR) of two injured employees' cases for which Dr. Myles provided treatment as a surgeon.

Medical Quality Review No. 12-12 HCP

Injured Employee A

5. In June 2007, Dr. Myles performed a double surgical procedure: a lumbar fusion to treat disc pathology and radiculopathy; and a surgical correction of a pre-existing scoliosis.
6. Dr. Myles performed an unreasonable, or medically unnecessary, surgery because he did not meet the standard of care for criteria to justify the surgery to correct the scoliosis.
7. Dr. Myles did not document sufficient medical evidence or justification for the scoliosis portion of the surgery.

Injured Employee B

8. Dr Myles performed two spinal fusion surgeries. In August 2009, Dr. Myles performed a lumbar fusion at L5-S1 based on spinal instability. However, this surgery resulted in a non-fusion. In a second April 2010 surgery to correct the non-fusion at L5-S1, Dr. Myles added an additional lumbar fusion at L4-L5.
9. Dr. Myles performed unreasonable, or medically unnecessary, surgeries because: in the first surgery, there was an insufficient degree of spondylolisthesis to justify the lumbar fusion at L5-S1; and in the second surgery, there was no evidence of any spinal instability to justify the lumbar fusion at L4-L5.
10. Dr. Myles did not document sufficient medical evidence or justification for either of the lumbar fusion surgeries.
11. Dr. Myles voluntarily agrees to be permanently removed from the Texas workers' compensation system as a health care provider, and/or as a certified designated doctor (DD) or physician certified to assign maximum medical improvement (MMI) dates and impairment ratings (IRs), and further agrees not to apply for these certifications.

12. 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 of resolving this dispute through administrative or judicial proceedings. Dr. Myles neither admits nor denies the allegations contained herein.

CONCLUSIONS OF LAW

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, 401.021, 402.001, 402.00111, 402.00114, 402.00116, 402.00128, 402.0215, 408.0231, 415.003, 415.021, and 415.0215; 28 TEX. ADMIN. CODE § 180.26; and TEX. GOV'T CODE ANN. §§ 2001.051–2001.178.¹
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. § 415.003(2), a health care provider commits an administrative violation if the person administers improper, unreasonable, or medically unnecessary treatment or services.
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 the Texas Workers' Compensation Act, or a rule, order, or decision of the commissioner.
5. Dr. Myles violated TEX. LAB. CODE ANN. §§ 415.003(2) and 415.021(a), when he performed surgical procedures in two injured employees' cases that were unreasonable or medically unnecessary because the procedures were not justified by sufficient medical evidence.
6. Pursuant to TEX. LAB. CODE ANN. § 408.0231(c)(5), the criteria for recommending or imposing sanctions may include anything the commissioner of workers' compensation considers relevant, including professional failure to practice medicine or provide health care in an acceptable manner consistent with the public health, safety, and welfare.

¹ All references to the Texas Labor Code (TLC) and the Texas Administrative Code (TAC) that relate to the findings of fact regarding violations, as set forth in this consent order, are those that were in effect when the violations occurred. Other TLC and TAC references related to jurisdictional and/or procedural issues cite current law.

7. Dr. Myles violated TEX. LAB. CODE ANN. §§ 408.0231(c)(5) and 415.021(a), by failing to meet the standard of care for medical record-keeping when he failed to document sufficient medical evidence to justify the surgical treatments he performed in two injured employees' cases.

ORDER


It is agreed and ORDERED that Robert Tytan Myles, M.D., will be permanently removed from the Texas workers' compensation system as a health care provider, and/or as a certified DD or physician certified to assign MMI dates and IRs, and will not apply for either of these certifications.

It is further agreed and ORDERED that Robert Tytan Myles, M.D., will not participate in treating, examining, and/or consulting with other physicians regarding injured employees who are covered under the Texas workers' compensation system, and will not receive direct or indirect remuneration from the Texas workers' compensation system.



Rod Bordelon *RB*
Commissioner of Workers' Compensation

Approved as to Form and Content:



Joseph M. Tabaracci
Staff Attorney, Compliance Division
Texas Department of Insurance

