

No. **DWC - 10 - 0026**

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

Date: **APR 30 2010**

Subject Considered:

KIMBERLY DRIGGERS, D.C.
2289 Normandy Grace
New Braunfels, TX 78130-8984

CONSENT ORDER
DISCIPLINARY ACTION
TDI ENFORCEMENT FILE NO. 56545

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 Dr. Kimberly Driggers, D.C. ("Dr. Driggers"). The Texas Department of Insurance, Division of Workers' Compensation Staff ("Division Staff") alleges that Dr. Driggers 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. Driggers 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, 408.023, 408.0231, 413.0511, 414.002, 414.003, 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

Dr. Driggers 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. Driggers 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. Dr. Driggers was licensed by the Texas Board of Chiropractic Examiners on July 12, 1996.
2. Dr. Driggers' chiropractic license is listed as inactive as of February 1, 2010.
3. Dr. Driggers participated as a health care provider in the Texas workers' compensation system.

System Participant – Designated Doctor

4. A "designated doctor", as defined by TEX. LAB. CODE ANN. § 401.011(15), means a doctor appointed by mutual agreement of the parties or by the Division of Workers' Compensation ("Division") to recommend a resolution of a dispute as to the medical condition of an injured employee.
5. In accordance with TEX. LAB. CODE ANN. § 408.1225(a), to be eligible to serve as a designated doctor, a doctor must meet specific qualifications, including training in the determination of impairment ratings and demonstrated expertise in performing examinations and making evaluations as described by TEX. LAB. CODE ANN. § 408.0041. The Commissioner shall develop qualification standards and administrative policies to implement this subsection and may adopt rules as necessary.
6. In accordance with 28 TEX. ADMIN. CODE § 180.21(d)(1)-(4), to be on the Designated Doctor List ("DDL") on or after January 1, 2007, the doctor shall at a minimum: meet the registration requirements, or the exceptions thereto, of 28 TEX. ADMIN. CODE § 180.21(c)(1) or, upon expiration or waiver of the Approved Doctor List ("ADL") in accordance with TEX. LAB. CODE ANN. § 408.023(k), comply with all successor requirements, including but not limited to financial

disclosure under TEX. LAB. CODE ANN. §413.041; have filed an application to be on the DDL, which must be renewed biennially; have successfully completed Division-approved training and examination on the assignment of impairment ratings using the currently adopted edition of the American Medical Association Guides, medical causation, extent of injury, functional restoration, return to work, and other disability management topics; and have had an active practice for at least three years during the doctor's career.

7. In accordance with 28 TEX. ADMIN. CODE § 126.7(q), the designated doctor shall maintain accurate records, including the employee records, analysis (including supporting information), and narratives provided by the insurance carrier and treating doctor, to reflect the date and time of any designated doctor appointments scheduled with an employee the circumstances regarding a cancellation, no-show or other situation where the examination did not occur as initially scheduled or rescheduled, the date of the examination, the date medical records were received from the treating doctor or any other person or organization, the date the medical evaluation report was submitted to all parties, the name of all referral health care providers, date of appointments and reason for referral by the designated doctor, and the date the doctor contacted the Division for assistance in obtaining medical records from the insurance carrier or treating doctor.
8. Dr. Driggers was approved to be on the Division's Designated Doctor List on October 26, 2007 and was on the Designated Doctor List during the time the violation described in this order occurred.
9. Dr. Driggers failed to take the required training necessary for re-certification and as of February 9, 2010, she is no longer on the Division's Designated Doctor List, nor is she a certified doctor

Medical Quality Review

10. The Division, as authorized by TEX. LAB. CODE ANN. §§ 413.0511 and 413.0512, conducts quality reviews of system participants to determine compliance with the Texas Workers' Compensation Act ("Act") and rules promulgated by the Commissioner of Workers' Compensation ("Rules").
11. Dr. Driggers was selected for a Medical Quality Review to evaluate her services rendered as a Designated Doctor and the accuracy of her Impairment Rating ("IR") assignments and certifications of Maximum Medical Improvement ("MMI").
12. The Division issued a notice of Medical Quality Review via facsimile on June 17, 2008, notifying Dr. Driggers of her selection for review.

13. In the June 17, 2008 letter, Dr. Driggers was requested to provide the Division with documentation/medical records for six named injured workers.
14. Dr. Driggers was required to forward all medical records to the Division by July 14, 2008.
15. Dr. Driggers failed to comply with the request.

Order for Production of Documents

16. On July 20, 2009, the Division issued an order for production of documents via certified mail to Dr. Driggers ordering her to produce the documentation/medical records for six named injured workers.
17. The order for production was received by Dr. Driggers on August 15, 2009.
18. Dr. Driggers was given ten days to provide the Division with the requested documentation/medical records.
19. Dr. Driggers has failed to comply with the Division order by failing to provide the requested medical records.

Aggravating Factors

20. In accordance with TEX. LAB. CODE ANN. § 408.0041(a), designated doctors perform medical examinations, as requested by an insurance carrier, employee, or the Division, to resolve any question about the impairment caused by the compensable injury, the attainment of MMI, the extent of the employee's compensable injury, 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.
21. The quality of designated doctors' examinations are important because injured workers rely upon designated doctors to recommend a resolution to disputes regarding their medical condition.
22. The requested documentation/medical records were necessary to allow for a review of Dr. Driggers' quality of care provided to injured workers in the Workers' Compensation system.
23. The Medical Quality Review could not be completed because the Division lacked the necessary documentation/medical records.

Mitigating Factors

24. Dr. Driggers has no prior disciplinary history for this type of violation.
25. Dr. Driggers is no longer on the Division's Designated Doctor List as of February 9, 2010.
26. Dr. Driggers is no longer certified to assign MMI and IR as of February 9, 2010.
27. Dr. Driggers is no longer eligible to practice medicine because her chiropractic license is inactive as of February 1, 2010.
28. In lieu of an administrative penalty, Dr. Driggers agrees not to reapply to the Designated Doctor List for a period of ten years from the date of the execution of this order.
29. In lieu of an administrative penalty, Dr. Driggers agrees not to reapply for MMI/IR certification for a period of ten years from the date of the execution of this order.
30. In lieu of an administrative penalty, Dr. Driggers agrees she will not practice before the Division as a health care practitioner for a period of ten years from the date of the execution of this order.

Other Considerations

31. 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. Driggers 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, 408.023, 408.0231, 413.0511, 414.002, 414.003, 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. Dr. Driggers has knowingly and voluntarily waived all procedural rights to which she 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 TEX. LAB. CODE ANN. § 415.003(5)&(6), a health care provider commits an administrative violation each time he or she violates a commissioner's rule or fails to comply with a provision of this subtitle.
7. In accordance with TEX. LAB. CODE ANN. § 415.0035(b)(1), a health care provider commits an administrative violation if that person fails or refuses to timely file required reports or records.
8. In accordance with TEX. LAB. CODE ANN. § 415.0035(e), a health care provider commits an administrative violation if that person violates this subtitle or a rule, order, or decision of the commissioner.
9. 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.
10. Dr. Driggers failed to timely file required medical records.
11. Dr. Driggers failed to timely comply with a Division order to produce medical records.

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 - 10 - 0026

COMMISSIONER'S ORDER

Dr. Driggers, CTS# 56545, April 8, 2010

Page 7 of 9

IT IS THEREFORE ORDERED that Dr. Kimberly Driggers shall not reapply for admission to the Designated Doctor List for a period of ten years from the date of the execution of this order.

IT IS ALSO ORDERED that Dr. Kimberly Driggers shall not reapply for MMI/IR certification for a period of ten years from the date of the execution of this order.


IT IS ALSO ORDERED that Dr. Kimberly Driggers shall cease and desist from practicing before the Division as a health care practitioner for a period of ten years from the date of the execution of this order.

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

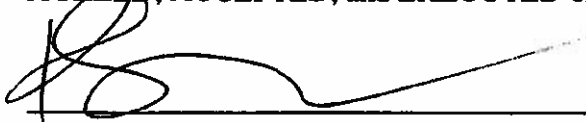
DWC-10-0026

COMMISSIONER'S ORDER

Dr. Driggers, CTS# 56545, April 8, 2010

Page 8 of 9

AGREED, ACCEPTED, and EXECUTED on this 12 day of April, 2010 by:

A handwritten signature in black ink, appearing to be 'K. Driggers', written over a horizontal line.

Signature of Kimberly Driggers, D.C.

DWC - 10 - 0026

COMMISSIONER'S ORDER
Dr. Driggers, CTS# 56545, April 8, 2010
Page 9 of 9

STATE OF TEXAS §
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BEFORE ME, Irma Gonzales, a notary public in and for the State of Texas, on this day personally appeared Kimberly Driggers known to me or proven to me through Dulcener to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she/he executed the same for the purposes and consideration therein expressed, who being by me duly sworn, deposed as follows:

1. "My name is Kimberly Driggers, 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."

[Handwritten Signature]

Signature

Kimberly Driggers
Typed/Printed Name

Given under my hand and seal of office this 12 day of April, 2010.

(NOTARY SEAL)



Irma Gonzales
Notary Public, State of Texas
My commission expires: 11/12/2012