

No. DWC - 10 - 0078

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

Date: SEP 10 2010

Subject Considered:

JAMES F. HOLLEMAN, JR., D.O.
2708 East 5th Street
Tyler, Texas 75701

CONSENT ORDER
DISCIPLINARY ACTION
TDI ENFORCEMENT FILE NO. 57642

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 James F. Holleman, Jr., D.O. ("Dr. Holleman"). The Texas Department of Insurance, Division of Workers' Compensation Staff ("Division Staff") alleges that Dr. Holleman violated the Texas Labor Code and that such conduct constitutes grounds for the imposition of sanctions pursuant to TEX. LAB. CODE ANN. § 408.0231, 28 TEX. ADMIN. CODE § 180.26, and TEX. LAB. CODE ANN., ch. 415.

Division Staff and Dr. Holleman 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. §§ 401.021, 402.001, 402.00111, 402.00114, 402.00116, 402.00128, 402.072, 408.023, 408.0231, 408.025, 413.0511, 413.0512, 414.002, 414.003, 415.003, 415.0035, 415.021, and 415.023; and 28 TEX. ADMIN. CODE §§ 137.1, 137.10, 137.100, 180.8, 180.21, 180.22, 180.26, and 180.27; and TEX. GOV'T CODE ANN. §§ 2001.051-2001.178.

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WAIVER

Dr. Holleman acknowledges the existence of certain rights provided for 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. Holleman 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. Dr. Holleman has been a licensed physician in the State of Texas since November 22, 1997 (License Number K4082).
2. Dr. Holleman provides medical treatment and care to injured employees in the Texas workers' compensation system.
3. The Division, as authorized by TEX. LAB. CODE ANN. § 414.002 and 28 TEX. ADMIN. CODE § 180.3, monitors system participants to determine compliance with the Texas Workers' Compensation Act ("Act") and rules promulgated by the Commissioner of Workers' Compensation ("Rules").
4. The Medical Advisor, whose duties are defined at TEX. LAB. CODE ANN. § 413.0511 and Medical Quality Review Panel, as established pursuant to TEX. LAB. CODE ANN. § 413.0512, conducted a medical quality review of two cases in which Dr. Holleman provided workers' compensation services. The findings contained in the Medical Quality Review #08-QR-023 largely form the evidentiary basis for this action.
5. Dr. Holleman engaged in conduct relating to the delivery, evaluation, or remuneration of health care that Division Staff finds is not fair and reasonable or that Division Staff determined does not meet professionally recognized standards of health care. This allegation is supported by the following facts, which were derived from the Medical Quality Review #08-QR-023.
 - a. In cases 1 and 2, Dr. Holleman failed to meet the standard of care.
 - b. In cases 1 and 2, the medical records did not adequately document the rationale for treatment.
 - c. In cases 1 and 2, the medical records did not adequately document the rationale or support the diagnoses.

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- d. In cases 1 and 2, documentation did not demonstrate that the injured employees made meaningful improvement with the treatment provided by Dr. Holleman.
 - e. In cases 1 and 2, the Official Disability Guidelines (ODG) did not support the treatment provided by Dr. Holleman.
 - f. In cases 1 and 2, the injured employees' work status was inappropriate according to the Medical Disability Advisor (MDA).
 - g. In cases 1 and 2, the costs for medications were highly excessive despite lack of progress and poor patient outcomes.
 - h. In case 1, a medically necessary referral to a neurosurgeon was made, but a psychological/psychiatric referral was not made despite documentation indicating the injured employee complained of anxiety, depression, and sleep disorder.
 - i. Documentation did not indicate any referrals were made in case 2.
6. This Order does not apply to emergency cases, and "emergency" shall be defined by 28 TEX. ADMIN. CODE § 133.2.

OTHER CONSIDERATIONS

- 7. 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. Holleman of resolving this dispute through administrative or judicial proceedings.
- 8. Dr. Holleman has entered into this settlement agreement to avoid the expense and time involved in litigation, but does not admit to the allegations made by Division Staff and asserts that the existence of a violation of the Act and Rules promulgated by the Commissioner of Workers' Compensation is in dispute.

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. §§ 401.021, 402.001, 402.00111, 402.00114, 402.00116, 402.00128, 402.072, 408.023, 408.0231, 408.025, 413.0511, 413.0512, 414.002, 414.003, 415.003, 415.0035, 415.021, and 415.023; and 28

TEX. ADMIN. CODE §§ 137.1, 137.10, 137.100, 180.8, 180.21, 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. Holleman 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 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. Dr. Holleman violated TEX. LAB. CODE ANN. § 408.023(l) because he failed to maintain the efficient management of medical care as required by TEX. LAB. CODE ANN. §408.025(c) and commissioner rules.
7. Dr. Holleman violated TEX. LAB. CODE ANN. § 408.025(c) because he failed to maintain the efficient utilization of health care.
8. 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).
9. Dr. Holleman administered improper, unreasonable, and medically unnecessary care, which, in accordance with TEX. LAB. CODE ANN. § 415.003(2), is an administrative violation.
10. Dr. Holleman violated the Division's treatment guidelines, which, in accordance with TEX. LAB. CODE ANN. § 415.003(4), is an administrative violation.
11. Dr. Holleman failed to comply with a provision of the Texas Workers' Compensation Act, Texas Labor Code, Title 5, Subtitle A ("the Act"), which in accordance with TEX. LAB. CODE ANN. § 415.003(6), is an administrative violation.

12. Dr. Holleman violated a rule of the Commissioner of Worker's Compensation, which, in accordance with TEX. LAB. CODE ANN. § 415.003(5), is an administrative violation;
 - a. Dr. Holleman violated 28 TEX. ADMIN. CODE § 137.10(a) because he failed to use the disability duration values in the current edition of The Medical Disability Advisor as guidelines for the evaluation of expected or average return to work time frames.
 - b. Dr. Holleman violated 28 TEX. ADMIN. CODE § 137.10(c)(1) because he failed to use the Division return to work guidelines to establish return to work goals or a return to work plan for safely returning injured employees to medically appropriate work environments.
 - c. Dr. Holleman violated or failed to comply with 28 TEX. ADMIN. CODE § 180.22(a) because he did not provide reasonable or necessary care to the injured employees.
 - d. Dr. Holleman violated 28 TEX. ADMIN. CODE § 180.22(a)(1)-(3), because he failed to cure or relieve the effects naturally resulting from injured employees' compensable injuries, he failed to promote injured employees' recovery, and/or he failed to enhance injured employees' ability to return to work.
 - e. Dr. Holleman violated 28 TEX. ADMIN. CODE § 180.22(b) because he did not timely and appropriately comply with all applicable requirements under the statutes and rules.
 - f. Dr. Holleman violated 28 TEX. ADMIN. CODE § 180.22(c) because he failed to maintain efficient management and utilization of health care for injured employees.
 - g. Dr. Holleman violated 28 TEX. ADMIN. CODE § 180.26(c)(3) because of his professional failure to practice medicine or provide health care in an acceptable manner consistent with the public health, safety, and welfare.
13. The conduct alleged above is grounds for imposing sanctions against Dr. Holleman because the Office of the Medical Advisor has recommended sanctions and the following conduct has occurred:
 - a. Dr. Holleman violated statutes, which, in accordance with 28 TEX. ADMIN. CODE § 180.26(d)(1), is grounds for imposing a sanction;
 - b. Dr. Holleman violated Rules, which, in accordance with 28 TEX. ADMIN. CODE § 180.26(d)(1), is grounds for imposing a sanction;

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- c. Dr. Holleman engaged in conduct relating to the delivery, evaluation, or remuneration of health care that the Division finds is not fair and reasonable, which, in accordance with 28 TEX. ADMIN. CODE § 180.26(d)(3), is grounds for imposing a sanction; and,
 - d. Dr. Holleman engaged in conduct relating to the delivery, evaluation, or remuneration of health care that the Division finds does not meet professionally recognized standards of health care, which, in accordance with 28 TEX. ADMIN. CODE § 180.26(d)(3), is grounds for imposing a sanction.
14. The Commissioner of Workers' 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.
 15. 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 impose mandatory preauthorization or utilization review of all or certain treatments or services administered.
 16. Dr. Holleman's diagnoses were found to be improper, unfair, and/or unreasonable because they were not supported by the documentation and/or physical exam findings in two injured employees' medical cases.
 17. Dr. Holleman's treatments were found to be improper, unfair, and/or unreasonable because they were not supported by the documentation and/or physical exam findings in two injured employees' medical cases.
 18. Dr. Holleman delivered health care that was excessive, unnecessary, and/or was not consistent with the public health, safety, and welfare, and therefore did not meet professionally recognized standards of care in two injured employees' medical cases.

Based on these findings of fact and conclusions of law, the Commissioner of Workers' Compensation approves the terms and conditions agreed to by Division Staff and Dr. Holleman and has determined that the appropriate disposition of this matter is to order full compliance with this Order.

IT IS THEREFORE ORDERED that, effective immediately upon the entry date of this Order, Dr. James F. Holleman, Jr. shall not accept any new workers' compensation patients.

IT IS FURTHER ORDERED that, effective immediately upon the entry date of this Order, Dr. James F. Holleman, Jr. shall provide each workers' compensation patient he has been treating with a thirty (30) day notice of termination of the physician/patient relationship. Said termination notice must advise patients to obtain alternative care within thirty (30) days, at which time the physician/patient relationship will be terminated in accordance with the findings of this Order.

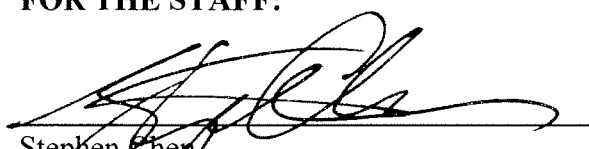
IT IS FURTHER ORDERED that, thirty (30) days from the entry date of this Order, Dr. James F. Holleman, Jr. shall cease and desist from providing or rendering health care services as a health care provider in the workers' compensation system.

IT IS ALSO ORDERED by the Commissioner of Workers' Compensation that should Dr. James F. Holleman, Jr. fail to comply with the terms of this Order, Dr. James F. Holleman, Jr. will have committed an additional administrative violation and that his failure to comply with the terms of this Order may subject Dr. James F. Holleman, Jr. 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 \$25,000.00 per day per occurrence.



ROD BORDELON
COMMISSIONER OF WORKERS' COMPENSATION

FOR THE STAFF:



Stephen Chen
Staff Attorney, Enforcement Division
Texas Department of Insurance

AGREED, ACCEPTED, AND EXECUTED BY:

James F. Holleman Jr. D.O.
Signature of James F. Holleman, Jr., D.O.

9-7-10
Date

JAMES F. HOLLEMAN JR. D.O.
Printed Name of James F. Holleman, Jr., D.O.

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COUNTY OF Smith §

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BEFORE ME, Sandra S. Bledsoe, a notary public in and for the State of Texas, on this day personally appeared James F. Holleman, Jr., known to me or proven to me through Driver License 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 James F. Holleman, Jr., D.O. 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."

James F. Holleman Jr D.O.
Signature

James F. Holleman Jr D.O.
Typed/Printed Name

Given under my hand and seal of office this 7th day of September, 2010.

(NOTARY SEAL)

Sandra S. Bledsoe
Notary Public, State of Texas
My commission expires: 02-13-2013

