

No. 4395

OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF WORKERS' COMPENSATION

APR 07 2016

Date: _____

Subject Considered:

DAVID L. HARDIN, D.C.
2700 W. Commerce Street
Buffalo, TX 75831-7778

CONSENT ORDER
TDI ENFORCEMENT FILE NO. 9963

General remarks and official action taken:

The commissioner of workers' compensation considers whether disciplinary action should be taken against David L. Hardin, D.C. (Dr. Hardin).

WAIVER

Dr. Hardin acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Dr. Hardin 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. Hardin was granted a license by the Texas Board of Chiropractic Examiners on August 22, 2013. Dr. Hardin holds Texas Chiropractic License Number 12431.
2. Dr. Hardin is a health care provider who is certified to perform designated doctor (DD) examinations, certify maximum medical improvement (MMI), and assign impairment ratings (IR) in the Texas workers' compensation system. Dr. Hardin's certifications expire on July 17, 2016.

3. Dr. Hardin was not classified in the 2007, 2009, 2011, 2013, or 2015 Performance Based Oversight assessments.
4. The DD who examines an injured employee to determine whether the injured employee has reached MMI and to assign an IR, if applicable, must file a Designated Doctor Examination Data Report (DWC Form-68), a Report of Medical Evaluation (DWC Form-69), and/or a Work Status Report (DWC Form-73), and narrative report with the division, and send the report to the proper parties no later than the seventh working day after the examination.
5. Dr. Hardin conducted 22 DD examinations between May 13, 2015 and August 3, 2015.
6. In fourteen instances, Dr. Hardin failed to timely file DWC Form-69s and narrative reports with the division. The DWC Form-69s and narrative reports were 9 to 67 days late in these 14 instances.
7. In two instances, Dr. Hardin failed to timely file DWC Form-68s with the division. The DWC Form-68 reports were between 10 and 48 days late.
8. In four instances, Dr. Hardin failed to timely file DWC Form-73s with the division. The DWC Form-73s were between 10 and 49 days late.
9. In eight instances, Dr. Hardin failed to file the required forms and narrative reports with the division, which resulted in the DD exams having to be re-designated to other DDs.
10. In eleven instances, Dr. Hardin was scheduled to conduct DD exams between May 8, 2015 and June 11, 2015. Dr. Hardin failed to attend the DD exams.
11. In one instance, Dr. Hardin performed a Required Medical Examination (RME), Dr. Hardin failed to file the RME report.

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. §§ 402.001, 402.00111, 402.00114, 402.00116, 402.00128, 408.0041, 415.0035, 415.021, and 415.0215; 28 TEX. ADMIN. CODE §§ 126.6, 127.10, 130.1, 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. Pursuant to TEX. LAB. CODE ANN. § 415.021, the commissioner of workers' compensation may assess an administrative penalty against a person who commits an administrative violation.
4. Pursuant to 28 TEX. ADMIN. CODE § 180.26(a) and (b)(4) and (5), the division may impose sanctions on any system participant if that system participant has committed an administrative violation. The sanctions the division may impose include deletion or suspension from the designated doctor list and restrictions on appointments or reviews.
5. Pursuant to 28 TEX. ADMIN. CODE § 127.10(d), a DD who determines the injured employee has reached MMI or who assigns an IR, or who determines the injured employee has not reached MMI, shall complete and file a report as required by 28 TEX. ADMIN. CODE § 130.1.
6. Pursuant to 28 TEX. ADMIN. CODE § 130.1(d)(2), a Report of Medical Evaluation (DWC Form-69) under this rule shall be filed with the division, injured employee, injured employee's representative, and the insurance carrier no later than the seventh working day after the date of the certifying examination.
7. Dr. Hardin violated 28 TEX. ADMIN. CODE §§ 127.10(d) and 130.1(d)(2) each time he failed to timely file the DWC Form-69 and narrative report within seven working days of the date of the DD examination.
8. Pursuant to 28 TEX. ADMIN. CODE § 127.10(f), a DD who examines an injured employee on any question or issue other than MMI/IR is required to file a DWC Form-68 and narrative report within seven working days of the date of the DD examination.
9. Dr. Hardin violated 28 TEX. ADMIN. CODE § 127.10(f) each time he failed to timely file the DWC Form-68 and narrative report.
10. Pursuant to 28 TEX. ADMIN. CODE § 127.10(e), a DD, who examines an injured employee on any question related to return to work, is required to file a DWC Form-73 within seven working days of the date of the DD examination.
11. Dr. Hardin violated 28 TEX. ADMIN. CODE § 127.10(e) each time he failed to timely file the DWC Form-73.
12. Pursuant to 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.
13. Dr. Hardin violated TEX. LAB. CODE ANN. § 415.0035(b)(1) each time he failed to timely file required forms and narrative reports.

14. Pursuant to TEX. LAB. CODE ANN. § 415.021, in addition to any other provisions in this subtitle relating to violations, a person commits an administrative violation if the person violates, fails to comply with, or refuses to comply with the Texas Labor Code, or a rule, order, or decision of the commissioner.
15. Dr. Hardin violated TEX. LAB. CODE ANN. § 415.021 each time he failed to appear at a commissioner ordered DD examination.
16. Pursuant to 28 TEX. ADMIN. CODE § 126.6(f), an RME doctor who, subsequent to a designated doctor's examination, determines the employee has reached maximum medical improvement or who assigns an impairment rating, shall complete and file the report as required by 28 TEX. ADMIN. CODE § 130.1 and §130.3. If the RME doctor disagrees with the designated doctor's opinion regarding MMI, the RME doctor's report shall explain why the RME doctor believes the designated doctor was mistaken or why the designated doctor's opinion is no longer valid. Other reports shall be completed in the form and manner prescribed by the Division and shall be sent to the carrier, the employee, the employee's representative, if any, the treating doctor, and Division no later than 10 days after the examination.
17. Dr. Hardin violated 28 TEX. ADMIN. CODE § 126.6(f) when he failed to file the required forms and report following a RME.

ORDER

David L. Hardin, D.C. is ORDERED to pay a \$10,000 administrative penalty. Payment is due within 180 days from the date of this Order. Payment must be paid by company check, cashier's check, or money order made payable to the "State of Texas" and mailed to the Texas Department of Insurance, Compliance Division-DWC, MC-9999, P.O. Box 149104, Austin, Texas 78714-9104.

It is also ORDERED that David L. Hardin, D.C. shall be suspended from the division's designated doctor list for a period of 240 days from the date the commissioner of workers' compensation signs this consent order. David L. Hardin, D.C. will not be allowed to perform designated doctor examinations in the Texas workers' compensation system during the suspension period. If David L. Hardin, D.C. applies for certification or recertification to the division's designated doctor list during the suspension period, the application will be denied.



W. Ryan Brannan
Commissioner of Workers' Compensation

Approved as to Form and Content:



Jeffrey Bulloch
Staff Attorney, Compliance Division
Texas Department of Insurance

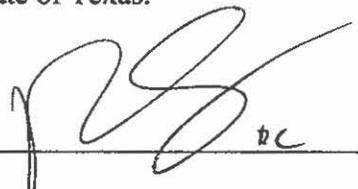
AFFIDAVIT

STATE OF TEXAS §
 §
COUNTY OF LEON §

Before me, the undersigned authority, personally appeared the affiant, David L. Hardin, D.C., who being by me duly sworn, deposed as follows:

“My name is David L. Hardin, D.C. 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 workers' compensation of the State of Texas.”



Affiant

SWORN TO AND SUBSCRIBED before me on March 11, 2016.

(NOTARY SEAL)

