

No. **3013**

OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF WORKERS' COMPENSATION

Date: **FEB 14 2014**

Subject Considered:

J. THOMAS DILGER, JR., M.D.
6718 Montay Bay Drive
Spring, TX 77389-4340

CONSENT ORDER
TDI ENFORCEMENT FILE NO. 431

General remarks and official action taken:

The commissioner of workers' compensation considers whether disciplinary action should be taken against J. Thomas Dilger, Jr., M.D. (Dr. Dilger).

WAIVER

Dr. Dilger acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Dr. Dilger 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. Dilger is a physician licensed by the State of Texas on August 26, 1984. He holds Texas medical license number G6822.
2. Dr. Dilger has been a Designated Doctor since 1999 and was initially certified in the Texas workers' compensation system to assign Maximum Medical Improvement (MMI) dates and Impairment Ratings (IR) on August 16, 2003. Dr. Dilger's recent renewal of his MMI/IR certification was issued on June 22, 2013, and remains effective until June 22, 2015.
3. Dr. Dilger has been a Designated Doctor since 1999. On June 21, 2013, Dr. Dilger's DD certification expired and it has not been renewed.
4. Dr. Dilger was classified as a "high tier" performer in the 2007 Performance Based Oversight (PBO) assessment, was not classified in the 2009 PBO assessment, and again, was classified as a "high tier" performer in the 2011 PBO assessment and again as a "high tier" performer in 2013.

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5. On September 17, 2009, Dr. Dilger and the division entered a consent order (2009 consent order) that required he: have 12 DD exam cases reviewed; pay a \$3,000 administrative penalty; ensure his exams were objective, evidence-based, and that his findings were documented; not perform separate examinations on one body area and unbundle the procedures for separate billings; not perform examinations or bill for services beyond the scope of his license and/or certifications; and ensure that his billing related only to compensable injuries and body areas. The consent order was based on a review of eight DD cases where it was determined that Dr. Dilger: administered medically improper, unreasonable, or medically unnecessary services; unbundled charges to potentially increase reimbursements; and coded or billed for non-compensable injuries, conditions, or body areas.
6. Pursuant to TEX. LAB. CODE ANN. § 414.002, the division is authorized to monitor system participants to determine compliance with the Texas Workers' Compensation Act (Act) and rules promulgated by the commissioner of workers' compensation (rules).
7. 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 No.11-47 MR) of 12 cases under the monitoring terms and conditions of the 2009 consent order.
8. As a result of the monitoring review completed on the 12 cases, five cases were found to have no problems. However, problems were found in seven of the reviewed cases and in two additional cases that came to the division's attention. The division further determined that the problems found were in violation of the Act and/or rules as follows:
 - a. In seven cases, three of which involved nervous system injuries/disorders, Dr. Dilger did not correctly apply the AMA Guides to the Evaluation of Permanent Impairment, Fourth Edition, (AMA Guides) when he assigned IRs that did not comply with the applicable rating criteria;
 - b. In nine cases, Dr. Dilger did not document objective medical evidence and/or an analysis of evidence to support his conclusions on the assigned DD questions;
 - c. In five cases, Dr. Dilger did not obtain a complete set of medical records for review prior to performing the DD examination;
 - d. In five cases, Dr. Dilger did not perform an adequate and/or complete DD examination consistent with division standards;
 - e. In five cases, Dr. Dilger did not reschedule the DD examination until such time as he could obtain the complete medical records for review; and
 - f. In nine cases, Dr. Dilger committed acts or omissions that were in violation of the terms and conditions set forth in the 2009 consent order.

9. As set forth above in Finding of Fact no. 8, Dr. Dilger's violations in performing DD examinations, and in assigning MMI dates and IRs, establish and show a pattern of practice.
10. Dr. Dilger denies the allegations set forth above but does not contest the findings of fact or conclusions of law or the entry of the order set forth below. 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, uncertainty and expense of resolving this dispute through administrative or judicial proceedings.
11. Dr. Dilger agrees never to re-apply for the division's DD certification.

CONCLUSIONS OF LAW

The commissioner of workers' compensation makes the following conclusions of law:

1. The commissioner has jurisdiction over this matter pursuant to pursuant to TEX. LAB. CODE ANN. §§ 401.011, 401.021, 402.001, 402.00111, 402.00114, 402.00116, 402.00128, 402.0215, 402.073, 408.0231, 408.1225, 408.123, 408.124, 413.002, 413.044, 413.0511, 413.0512, 414.002, 415.003, 415.0035, 415.021, 415.0215, 415.023, 415.032, 415.033, and 415.034; and 28 TEX. ADMIN. CODE §§ 126.7, 127.10, 130.1, 148.5, 180.8, 180.22, and 180.26; and TEX. GOV'T CODE ANN. §§ 2001.051–2001.178.¹
2. The commissioner has authority to informally dispose of this matter 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. § 408.0231(c), the criteria for deleting a doctor from the list or for recommending or imposing sanctions may include anything the commissioner considers relevant, including: (3) evidence from the division's medical records that the doctor's evaluations, or IRs are substantially different from those the commissioner finds to be fair and reasonable based on either a single determination or a pattern of practice.
4. Pursuant to 28 TEX. ADMIN. CODE § 130.1(c)(2)(B)(i), a doctor who certifies that an injured employee has reached MMI shall assign an IR for the current compensable injury using the rating criteria contained in the appropriate edition of the AMA Guides, and the appropriate edition of the AMA Guides to use for certifying examinations conducted on or after October 15, 2001 is the fourth edition of the AMA Guides.
5. Dr. Dilger violated TEX. LAB. CODE ANN. § 408.0231(c)(3), and 28 TEX. ADMIN. CODE § 130.1(c)(2)(B)(i), when he assigned IRs in seven cases that failed to comply with the applicable rating criteria in the AMA Guides.

¹ The statutes and rules cited that relate to the facts of any alleged violations are those that were in effect at the time the alleged violations occurred. Statutes and rules cited with reference to jurisdictional and/or procedural issues are those currently in effect.

6. Pursuant to 28 TEX. ADMIN. CODE § 130.1(c)(3)(B), the doctor assigning the IR shall document specific laboratory or clinical findings of an impairment.
7. Pursuant to 28 TEX. ADMIN. CODE § 130.1(c)(3)(C), the doctor assigning the IR shall analyze specific clinical and laboratory findings of an impairment.
8. Pursuant to 28 TEX. ADMIN. CODE § 130.1(c)(3)(D), the doctor assigning the IR shall compare the results of the analysis with the impairment criteria and provide the following:
(i) A description and explanation of specific clinical findings related to each impairment, including zero percent (0%) IRs; and (ii) A description of how the findings relate to and compare with the criteria described in the applicable chapter of the AMA Guides. The doctor's inability to obtain required measurements must be explained.
9. Dr. Dilger violated 28 TEX. ADMIN. CODE §§ 130.1(c)(3)(B), 130.1(c)(3)(C), and 130.1(c)(3)(D)(i) & (ii), when he failed to document objective medical evidence and/or an analysis of evidence in nine cases to support his conclusions on the assigned DD questions.
10. Pursuant to 28 TEX. ADMIN. CODE §§ 126.7(j) and 127.10(b), the DD shall review the employee's medical records and shall perform a complete physical examination.²
11. Dr. Dilger violated 28 TEX. ADMIN. CODE §§ 126.7(j) and 127.10(b), when he failed to obtain a complete set of medical records for review in five cases prior to performing the DD examination.
12. Dr. Dilger violated 28 TEX. ADMIN. CODE §§ 126.7(j) and 127.10(b), when he failed to perform and an adequate and/or complete DD examination in five cases.
13. Pursuant to 28 TEX. ADMIN. CODE §§ 126.7(i)(4)(B) and 127.10(a)(3), if the DD has not received the medical records or any part thereof at least one day prior to the examination, the DD shall reschedule the examination.³
14. Dr. Dilger violated 28 TEX. ADMIN. CODE §§ 126.7(i)(4)(B) and 127.10(a)(3), when he failed to reschedule the DD examination in five cases until such time as he could obtain the complete medical records for review.
15. Pursuant to TEX. LAB. CODE ANN. § 415.0035(e), a person regulated by the division under this title commits an administrative violation if the person violates this subtitle or a rule, order, or decision of the commissioner.

² 28 TEX. ADMIN. CODE § 126.7(j) was effective January 1, 2007, and repealed on February 1, 2011, and 28 TEX. ADMIN. CODE § 127.10(b) was effective February 1, 2011, and remains current.

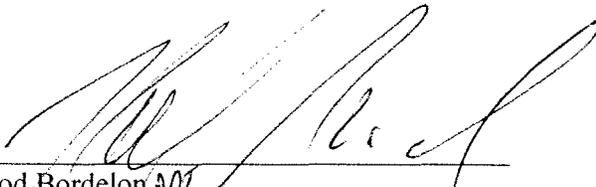
³ 28 TEX. ADMIN. CODE § 126.7(i)(4)(B) was effective January 1, 2007, and repealed on February 1, 2011, and 28 TEX. ADMIN. CODE § 127.10(a)(3) was effective February 1, 2011, and remains current.

16. Pursuant to TEX. LAB. CODE ANN. § 415.021(a), 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 this subtitle or a rule, order, or decision of the commissioner, including an emergency cease and desist order issued under Section 415.0211. In addition to any sanctions, administrative penalty, or other remedy authorized by this subtitle, the commissioner may assess an administrative penalty against a person who commits an administrative violation. The administrative penalty shall not exceed \$25,000 per day per occurrence. Each day of noncompliance constitutes a separate violation. The commissioner's authority under this chapter is in addition to any other authority to enforce a sanction, penalty, fine, forfeiture, denial, suspension, or revocation otherwise authorized by law.
17. Dr. Dilger violated TEX. LAB. CODE ANN. §§ 415.0035(e) and 415.021(a), when he violated the 2009 consent order in nine cases.
18. Pursuant to TEX. LAB. CODE ANN. § 415.003, a health care provider commits an administrative violation if the person: (5) violates a commissioner rule; or (6) fails to comply with a provision of this subtitle.
19. Dr. Dilger committed administrative violations under TEX. LAB. CODE ANN. §§ 415.003(5) and (6), 415.0035(e), and 415.021(a), each time he violated, or failed to comply with, or refused to comply with, a section of the Texas Workers' Compensation Act and/or a Division rule.

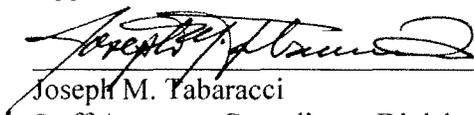
ORDER

It is agreed and ORDERED that as of the effective date of this consent order, J. Thomas Dilger, Jr., M.D., will never re-apply for the DD certification in the Texas workers' compensation system.

It is further agreed and ORDERED that, if J. Thomas Dilger, Jr., M.D., should re-apply for the DD certification, the division will not grant the DD certification, and his re-application will constitute a violation of this consent order.


Rod Bordelon
Commissioner of Workers' Compensation

Approved as to Form and Content:


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

