

No. 2863

OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF WORKERS' COMPENSATION
NOV 22 2013
Date: _____

Subject Considered:

ROUZBEH K. KORDESTANI, M.D.
3501 South Soncy Road, Suite 137
Amarillo, TX 79119-6406

CONSENT ORDER
TDI ENFORCEMENT FILE NO. 3464

General remarks and official action taken:

The commissioner of workers' compensation considers whether disciplinary action should be taken against Rouzbeh K. Kordestani, M.D. (Dr. Kordestani).

WAIVER

Dr. Kordestani acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Dr. Kordestani 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. Kordestani is a physician licensed by the State of Texas on December 10, 2004. He holds Texas Medical Board License No. M0133.
2. Dr. Kordestani was initially certified in the Texas workers' compensation system as a designated doctor (DD), and certified to assign Maximum Medical Improvement (MMI) and Impairment Ratings (IR), on July 26, 2012. Dr. Kordestani's DD certification is effective until July 26, 2014, and his MMI/IR certification is effective until July 26, 2016.

3. Dr. Kordestani was not classified in the 2007, 2009, or 2011 Performance Based Oversight (PBO) assessments.
4. During the period July 26, 2012, and January 28, 2013, Dr. Kordestani was assigned by the division to perform DD examinations on 26 injured employees.
5. Dr. Kordestani did not ensure that all the assigned DD examinations were properly processed to completion. Specifically, in some of the assignments, he did not:
 - a. timely file a division Report of Medical Evaluation (DWC Form-069);
 - b. follow division requirements for re-scheduling a DD examination; and
 - c. obtain the division's approval for a change in DD examination location.
6. On February 4, 2013, the division issued Dr. Kordestani an Order for Production (Order) requesting a DWC Form-069 that had not been filed. Dr. Kordestani responded but did not provide all the documents required by the Order.
7. Dr. Kordestani agrees to voluntarily and permanently surrender his division DD and MMI/IR certifications, and further agrees not to re-apply for these certifications.
8. 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. Kordestani 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. §§ 401.001, 401.011, 401.021, 402.001, 402.00111, 402.00114, 402.00116, 402.00128, 408.0041, 413.0511, 415.0035, and 415.0215; 28 TEX. ADMIN. CODE §§ 127.5¹, 130.1, 180.1, and 180.26; and TEX. GOV'T CODE ANN. §§ 2001.051–2001.178.

¹ 28 TEX. ADMIN. CODE § 127.5(e) was amended during the time period the violations occurred which are the subject of this consent order. Both versions and their respective effective dates are set forth below.

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. § 415.0035(e), a person regulated by the division under the Texas Workers' Compensation Act commits an administrative violation if the person violates this subtitle or a rule, order, or decision of the commissioner.
4. Pursuant to 28 TEX. ADMIN. CODE § 127.5(b), the examination address indicated on an order assigning a DD examination may not be changed by any party, or by an agreement of any parties, without good cause and the approval of the division.
5. Pursuant to 28 TEX. ADMIN. CODE § 127.5(e), the designated doctor's office and the injured employee shall contact each other if there exists a scheduling conflict for the designated doctor appointment. The designated doctor or the injured employee who has the scheduling conflict must make the contact at least 24 hours prior to the appointment. The 24-hour requirement will be waived in an emergency situation. The rescheduled examination shall be set to occur within 21 days of the originally scheduled examination. Within 24 hours of rescheduling, the designated doctor shall contact the division's field office, the injured employee or the injured employee's representative, if any, and the insurance carrier with the time and date of the rescheduled examination. If the examination cannot be rescheduled within 21 days of the originally scheduled examination, the designated doctor shall notify the division immediately, and the division may select a new designated doctor. *(Effective date: February 1, 2011)*
6. Pursuant to 28 TEX. ADMIN. CODE § 127.5(e), the designated doctor's office and the injured employee shall contact each other if there exists a scheduling conflict for the designated doctor appointment. The designated doctor or the injured employee who has the scheduling conflict must make the contact at least one working day prior to the appointment. The one working day requirement will be waived in an emergency situation. If both the designated doctor and the injured employee agree to reschedule the examination, the rescheduled examination shall be set to occur no later than 21 days after the scheduled date of the originally scheduled examination and may not be rescheduled to occur before the originally scheduled examination. Within one working day of rescheduling, the designated doctor shall contact the division, the injured employee or the injured employee's representative, if any, the injured employee's treating doctor, and the insurance carrier with the time and date of the rescheduled examination. If the examination cannot be rescheduled no later than 21 days after the scheduled date of the originally scheduled examination or if the injured employee fails to attend the

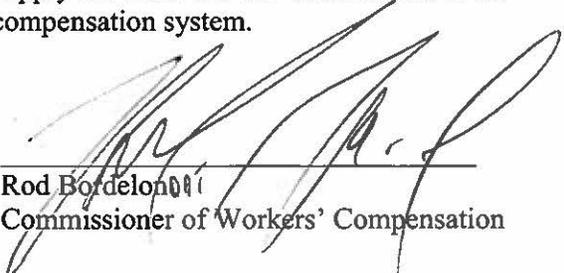
rescheduled examination, the designated doctor shall notify the division as soon as possible but not later than 21 days after the scheduled date of the originally scheduled examination. After receiving this notice, the division may select a new designated doctor. *(Effective date: September 1, 2012)*

7. Pursuant to 28 TEX. ADMIN. CODE § 130.1(d)(2)(A), a DWC Form-069 under this rule shall be filed with the commission, employee, employee's representative, and the insurance carrier no later than the seventh working day after the later of: (A) date of the certifying examination.
8. Pursuant to 28 TEX. ADMIN. CODE § 180.26(a), the division may impose sanctions on any system participant if that system participant commits an administrative violation.
9. Dr. Kordestani violated TEX. LAB. CODE ANN. § 415.0035(e), by failing to fully comply with a division Order for Production.
10. Dr. Kordestani violated TEX. LAB. CODE ANN. § 415.0035(e) , and 28 TEX. ADMIN. CODE § 127.5(b) by failing to obtain division approval prior to changing the location of a DD examination.
11. Dr. Kordestani violated TEX. LAB. CODE ANN. § 415.0035(e), and 28 TEX. ADMIN. CODE § 127.5(e), each time he failed to follow division requirements related to the rescheduling of a DD examination.
12. Dr. Kordestani violated TEX. LAB. CODE ANN. § 415.0035(e) , and 28 TEX. ADMIN. CODE § 130.1(d)(2)(A), each time he failed to timely file a DWC Form-069 after the date of completion of a DD examination.

ORDER

It is agreed and ORDERED that as of the effective date of this consent order, Rouzbeh K. Kordestani, M.D.'s certifications to act as a DD, and to assign MMI dates and IRs, are permanently surrendered.

It is further agreed and ORDERED that Rouzbeh K. Kordestani, M.D., is permanently removed from the DD list, and he will not re-apply for either the DD certification or the MMI/IR certification in the Texas workers' compensation system.



Rod Bordelon
Commissioner of Workers' Compensation

Approved as to Form and Content:



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

AFFIDAVIT

STATE OF Texas §
COUNTY OF Randall §

Before me, the undersigned authority, personally appeared the affiant, who being by me duly sworn, deposed as follows:

"My name is Rouzbeh K. Kordestani, M.D., I am of sound mind, capable of making this statement, and have personal knowledge of these facts which are true and correct.

I waive rights provided by the Texas Labor Code and other applicable laws and acknowledge the jurisdiction of the Texas commissioner of workers' compensation.

I voluntarily enter into this consent order and consent to the issuance and service of this consent order."

Affiant (Rouzbeh K. Kordestani)

SWORN TO AND SUBSCRIBED before me on November 7, 2013.

(NOTARY SEAL)



Ginger Winn
Signature of Notary Public

Ginger Winn
Printed Name of Notary Public