

No. **DWC-10-0027**

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

Date: APR 30 2010

Subject Considered:

M. LEWIS FRAZIER, JR., M.D.
5425 W. Spring Creek Pkwy., Suite 100
Plano, Texas 75024

CONSENT ORDER
DISCIPLINARY ACTION
TDI ENFORCEMENT FILE NO. 55820

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 M. Lewis Frazier, M.D. (Dr. Frazier). The Texas Department of Insurance, Division of Workers' Compensation Staff (Division Staff) alleges that Dr. Frazier 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. Frazier 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, 408.0041, 408.123, 414.002, 414.003, 415.003, 415.021, and 415.023; and 28 TEX. ADMIN. CODE §§ 126.7, 130.1, 130.3, 130.6, 180.1, 180.2, 180.3, 180.7, 180.8, 180.10, 180.21, 180.22, 180.23, and 180.26; and TEX. GOV'T CODE ANN. §§ 2001.051-2001.178.

WAIVER

Dr. Frazier 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. Frazier 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 – Certifying Doctor

1. In accordance with 28 TEX. ADMIN. CODE § 130.1(a)(1), only an authorized doctor may certify Maximum Medical Improvement (MMI), determine whether there is permanent impairment, and assign an impairment rating.
2. In accordance with 28 TEX. ADMIN. CODE § 130.1(a)(1)(A)(i)-(iii), doctors serving in the following roles may be authorized: the treating doctors (or a doctor to whom the treating doctor has referred the employee for evaluation of maximum medical improvement and/or permanent whole body impairment in the place of the treating doctor), a designated doctor, and a required medical examination doctor selected by the carrier and approved by the commission after a designated doctor has performed a maximum medical improvement and/or permanent whole body impairment exam.
3. In accordance with 28 TEX. ADMIN. CODE § 130.1(a)(1)(B)(i)-(ii), a doctor serving in one of the roles described in subsection 28 TEX. ADMIN. CODE § 130.1 (a)(1)(A), is authorized as follows: a doctor whom the commission has certified to assign impairment ratings or otherwise given specific permission by exception to, is authorized to determine whether an injured employee has permanent impairment, assign an impairment rating, and certify MMI; and a doctor whom the commission has not certified to assign impairment ratings or otherwise given specific permission by exception to is only authorized to determine whether an injured employee has permanent impairment and, in the event that the injured employee has no impairment, certify MMI.

4. In accordance with 28 TEX. ADMIN. CODE § 130.1(a)(3), a doctor who is authorized under this subsection to certify MMI, determine whether permanent impairment exists, and assign an impairment rating and who does, shall be referred to as the "certifying doctor."
5. Dr. Frazier was last certified to assign impairment ratings on June 11, 2009.

Certification of Maximum Medical Improvement and Evaluation of Impairment Ratings

6. In accordance with TEX. LAB. CODE ANN. § 408.123(a), after an employee has been certified by a doctor as having reached maximum medical improvement, the certifying doctor shall evaluate the condition of the employee and assign an impairment rating.
7. In accordance with TEX. LAB. CODE ANN. § 408.123(b), a certifying doctor shall issue a written report certifying that maximum medical improvement has been reached, stating the employee's impairment rating, and providing any other information required by the Commissioner to the Division, the employee, and the insurance carrier.
8. In accordance with 28 TEX. ADMIN. CODE § 130.1(d)(1), certification of maximum medical improvement and assignment of an impairment rating requires submission of a Report of Medical Evaluation, also known as the DWC Form-69.
9. In accordance with 28 TEX. ADMIN. CODE § 130.1(d)(2), the DWC Form-69 must be filed with the Division, employee, employee's representative, and the insurance carrier no later than the seventh working day after the later of the date of the certifying examination or the receipt of all of the medical information required by 28 TEX. ADMIN. CODE § 130.1.
10. In accordance with 28 TEX. ADMIN. CODE § 130.1(d)(3)(A)-(B), the Report of Medical Evaluation shall be filed with the insurance carrier by facsimile or electronic transmission; and the Report of Medical Evaluation shall be filed with the commission, the injured employee and the injured employee's representative by facsimile or electronic transmission if the doctor has been provided the recipient's facsimile number or email address; otherwise, the report shall be filed by other verifiable means.
11. In accordance with 28 TEX. ADMIN. CODE § 130.1(e)(1)-(3), the certifying doctor shall maintain the original copy of the Report of Medical Evaluation and narrative as well as documentation of the date of the examination; the date any medical records necessary to make the certification of maximum

medical improvement were received, and from whom the medical records were received; and the date, addressees, and means of delivery that reports required under 28 TEX. ADMIN. CODE § 130.1 were transmitted or mailed by the certifying doctor.

System Participant – Designated Doctor

12. A "designated doctor" (DD), 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.
13. In accordance with 28 TEX. ADMIN. CODE § 180.21(b), in order to serve as a designated doctor, a doctor must be on the Designated Doctor List (DDL).
14. In accordance with 28 TEX. ADMIN. CODE § 180.21(d)(1)-(4), to be on the 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.
15. Dr. Frazier was last approved to be on the Division's Designated Doctor List on June 11, 2009.

Designated Doctor's Role and Responsibilities

16. In accordance with TEX. LAB. CODE ANN. § 408.0041(a), a designated doctor may be called upon to 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.

17. In accordance with 28 TEX. ADMIN. CODE § 126.7(n), a designated doctor must file a report, as required by 28 TEX. ADMIN. CODE §§ 130.1 and 130.3, when the designated doctor determines that an employee has reached MMI, when the designated doctor assigns an impairment rating, or when the designated doctor determines that the employee has not reached MMI. The report must be sent to the insurance carrier, the employee, the employee's representative, if any, the treating doctor, and the Division.
18. 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, including the narrative report described in subsection 28 TEX. ADMIN. CODE § 126.7 (n), 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.
19. In accordance with 28 TEX. ADMIN. CODE § 126.7(u)(1)-(2), the Division may contact the designated doctor if it determines that clarification is necessary to resolve an issue regarding the designated doctor's report. The Division, at its discretion, may request clarification from the designated doctor on issues the Division deems appropriate. To respond to the request for clarification, the designated doctor must be on the Division's DDL at the time the request is received by the Division. The designated doctor shall respond to the letter of clarification within five days of receipt. If in order to respond to the request for clarification, the designated doctor has to reexamine the injured employee, the doctor shall: respond to the request for clarification advising of the need for an additional examination within five days of receipt and provide copies of the response to the parties specified in subsection 28 TEX. ADMIN. CODE § 126.7 (p); and conduct the reexamination within 21 days from the request by the Division at the location of the original examination.

Assignment of a Designated Doctor

20. In accordance with TEX. LAB. CODE ANN. § 408.0041(b), a medical examination requested under Subsection TEX. LAB. CODE ANN. § 408.0041 (a) shall be performed by the next available doctor on the Division's list of

designated doctors whose credentials are appropriate for the issue in question and the injured employee's medical condition as determined by commissioner rule.

21. Pursuant to 28 TEX. ADMIN. CODE § 126.7(e), the Division, within 10 days after approval of a valid request, shall issue a written notice that assigns a designated doctor; requires an exam to be conducted on a date no earlier than 14 days, but no later than 21 days from the date of the written notice; and notify the designated doctor, the employee, the employee's representative, if any, and the insurance carrier that the designated doctor will be directed to examine the employee. The written notice shall indicate the designated doctor's name, license number, practice address and telephone number, and the date and time of the examination or the date range for the examination to be conducted; explain the purpose of the designated doctor examination; require the employee to submit to an examination by the designated doctor; and require the treating doctor and insurance carrier to forward all medical records.
22. Pursuant to 28 TEX. ADMIN. CODE § 126.7(f), the designated doctor's office and the employee shall contact each other if there exists a scheduling conflict for the designated doctor appointment. The designated doctor or the 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 (such as a death in the immediate family or a medical emergency). 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 and the insurance carrier with the time and date of the rescheduled examination. If the examination cannot be rescheduled within 21 days, the designated doctor shall notify the Division and the Division shall select a new designated doctor.

Division Audit of Dr. Frazier

23. Dr. Frazier was audited by the Division on September 22, 2008. The purpose of the audit was to determine if Dr. Frazier was timely in filing the DWC Form-69 with the insurance carrier and the method by which the report was submitted to the insurance carrier. The audit evaluated Dr. Frazier's performance during a seven month period from January 1, 2008 through June 30, 2008.
24. Dr. Frazier filed 11 DWC Form-69s, which were subject to the audit, during the period of review.

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25. Of the 11 DWC Form-69s identified, six were timely sent to the insurance carrier.
26. Of the 11 DWC Form-69s identified, 11 were sent to the insurance carrier via facsimile or electronic transmission.
27. Dr. Frazier's compliance rate for filing forms in a timely manner was 54.55%.
28. Dr. Frazier's compliance rate for filing forms by the proper method was 100%.

Aggravating Factors

Harm to Injured Workers

29. Pursuant to TEX. LAB. CODE ANN. § 408.121 (a)–(b), an employee's entitlement to impairment income benefits begins on the day after the date the employee reaches MMI and the insurance carrier must begin paying impairment income benefits not later than the fifth day after receiving the doctor's report certifying MMI.
30. Pursuant to TEX. LAB. CODE ANN. § 408.122, a claimant may not recover impairment income benefits unless there is evidence of impairment based on objective clinical or laboratory findings. If the finding of impairment is made by a doctor chosen by the claimant and the finding is contested, a designated doctor or a doctor selected by the insurance carrier must be able to confirm the objective clinical or laboratory finding on which the finding of impairment is based.
31. The payments of impairment income benefits to injured employees may have been delayed as a result of Dr. Frazier's inability to submit the DWC Form-69 in a timely manner.
32. Dr. Frazier's failure to timely file the DWC Form-69 may have delayed the dispute resolution process.

Prior History

33. Dr. Frazier paid administrative penalties totaling \$1,429.00 relating to Audit No. T69-00-0001. The purpose of the audit was to determine if Dr. Frazier was timely in filing the DWC Form-69.

34. Dr. Frazier paid administrative penalties totaling \$21,241.00 relating to Audit FUT-69-03-0020. The purpose of the audit was to determine if Dr. Frazier was timely filing the DWC Form-69.
35. Dr. Frazier paid administrative penalties totaling \$529.00 for Audit FUT-69-04-0025. The purpose of the audit was to determine if Dr. Frazier was timely filing the DWC Form-69.

Performance Based Oversight (PBO)

36. Dr. Frazier was identified as a poor tier performer in the 2007 PBO assessment.
37. Dr. Frazier was not assessed for PBO in 2009.

Mitigating Factors

38. Dr. Frazier agrees to adopt and implement a compliance plan to prevent future administrative violations, and to provide the Division with a copy of the compliance plan.
39. Dr. Frazier agrees to be suspended from the Designated Doctor List for six (6) months. During this suspension, the Division will not assign, nor shall he accept, any initial designated doctor appointments.
40. During this suspension, Dr. Frazier agrees, upon request of the Division, he will accept appointments and will timely conduct reexaminations and/or subsequent examinations of injured workers for which he was previously assigned to as a designated doctor and will timely respond to all Division requests for Letters of Clarification.
41. Dr. Frazier agrees that he will not modify his appointment location matrix for six months without prior approval from the Office of the Medical Advisor. Therefore, for six months there will be no additions or deletions of counties unless approved by the Office of the Medical Advisor.
42. Dr. Frazier agrees to file the DWC Form-69 in a timely manner as required by 28 TEX. ADMIN. CODE §§ 126.7 and 130.1.
43. Dr. Frazier agrees to maintain proper records/documentation as required by 28 TEX. ADMIN. CODE §§ 126.7(q)(1)-(7) and 130.1(e)(1)-(3).

Other Considerations

44. 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. Frazier 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, 408.0041, 408.123, 414.002, 414.003, 415.003, 415.021, and 415.023; and 28 TEX. ADMIN. CODE §§ 126.7, 130.1, 130.3, 130.6, 180.1, 180.2, 180.3, 180.7, 180.8, 180.10, 180.21, 180.22, 180.23, 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 § 180.8(h).
3. Dr. Frazier 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. In accordance with 28 TEX. ADMIN. CODE § 180.21(m), in addition to the grounds for deletion or suspension from the ADL or for issuing other sanctions against a doctor under 28 TEX. ADMIN. CODE § 180.26, the

Commissioner shall delete or suspend a doctor from the DDL, or otherwise sanction a designated doctor for noncompliance with the requirements of this section or for any violation of applicable statutes or rules while serving as a designated doctor.

7. 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.
8. In accordance with TEX. LAB. CODE ANN. § 415.003(5), a health care provider, like a designated doctor, commits an administrative violation each time he or she violates a commissioner's rule.
9. Dr. Frazier violated 28 TEX. ADMIN. CODE § 130.1(d)(2), each time he failed to file the DWC Form-69 in a timely manner.
10. Dr. Frazier failed to timely file the DWC Form-69 with the Division in five (5) instances.

Based on the Findings of Fact and Conclusions of Law above, the Commissioner of Workers' Compensation has determined that the appropriate disposition is imposition of the following sanctions and full compliance with the terms of this Order.

IT IS THEREFORE ORDERED that thirty (30) days from the date of this Order, Dr. M. Lewis Frazier shall be suspended from the designated doctor list for a period of six (6) months. During this suspension, Dr. Frazier will not be assigned, nor shall he accept, initial designated doctor appointments.

IT IS FURTHER ORDERED that during this six (6) month suspension, Dr. M. Lewis Frazier, upon request of the Division, shall accept appointments and timely conduct reexaminations and/or subsequent examinations of injured workers for which he was previously assigned to as a designated doctor and shall timely respond to all Division requests for Letters of Clarification.

IT IS ALSO ORDERED that Dr. M. Lewis Frazier shall pay, and is hereby directed to pay, on or before thirty (30) days from the date of this Order, an administrative penalty in the amount of FIVE THOUSAND DOLLARS (\$5,000.00). Payment must be paid by cashier's check or money order made payable to the "State of Texas" and transmitted to the Texas Department of Insurance, Enforcement Division-DWC, Division 3721, MC-9999, P.O. Box 149104, Austin, Texas 78714-9104.

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IT IS ALSO ORDERED that Dr. M. Lewis Frazier will not modify his appointment location matrix for six months without prior approval from the Office of the Medical Advisor. Therefore, for six months there will be no additions or deletions of counties unless approved by the Office of the Medical Advisor.

IT IS ALSO ORDERED that within thirty (30) days from the date of this Order, Dr. M. Lewis Frazier shall provide the Division with a copy of his compliance plan, which shall be directed at ensuring future compliance with the Texas Workers' Compensation Act and Rules.

IT IS FURTHER ORDERED that Dr. M. Lewis Frazier will file the DWC Form-69 in a timely manner as required by 28 TEX. ADMIN. CODE § 130.1(d)(2).


IT IS FURTHER ORDERED that Dr. M. Lewis Frazier will file the Letter of Clarification in a timely manner as required by 28 TEX. ADMIN. CODE § 126.7(u)

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



Terra Colvin Thomas
Staff Attorney, Enforcement Division
Texas Department of Insurance

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AGREED, ACCEPTED, and EXECUTED on this 16 day of April, 2010 by:

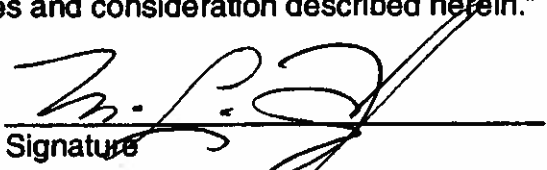


Signature of M. Lewis Frazier, M.D.

STATE OF TEXAS §
§
COUNTY OF _____ §

BEFORE ME, Beverly Vahary, a notary public in and for the State of Texas, on this day personally appeared M. Lewis Frazier, known to me or proven to me through M. Lewis Frazier 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 M. Lewis Frazier, M.D. 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."



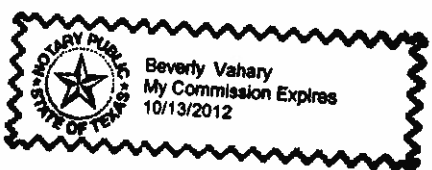
 Signature

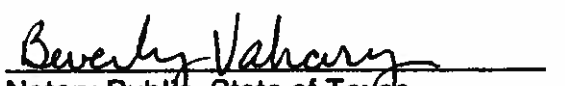
M. Lewis Frazier M.D.

 Typed/Printed Name

Given under my hand and seal of office this 16 day of April, 2010.

(NOTARY SEAL)





 Notary Public, State of Texas
 My commission expires: 10-13-2012