

No. **3557**

**OFFICIAL ORDER**  
*of the*  
**TEXAS COMMISSIONER OF WORKERS' COMPENSATION**

Date: **SEP 23 2014**

**Subject Considered:**

**MARY FRANCES BURGESSER, M.D.**  
1205 S. Elm Grove Road  
Brookfield, WI 53005

**CONSENT ORDER**  
TDI ENFORCEMENT FILE NO. 7153

**General remarks and official action taken:**

The commissioner of workers' compensation considers whether disciplinary action should be taken against Mary Frances Burgess, M.D. (Dr. Burgess).

**WAIVER**

Dr. Burgess acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Dr. Burgess 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. Burgess is a physician licensed by the State of Texas on November 22, 1997. She holds Texas Medical Board license no. K4005.
2. Dr. Burgess is a health care provider in the Texas workers' compensation system.
3. Dr. Burgess was not classified in the 2007, 2009, 2011, or 2013 Performance Based Oversight assessments.

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4. Dr. Burgesser was initially certified in the Texas workers' compensation system as a designated doctor (DD) on November 19, 2001. On July 17, 2013, Dr. Burgesser's DD certification expired and it has not been renewed. Dr. Burgesser was initially certified to assign Maximum Medical Improvement (MMI) dates and Impairment Ratings (IR) on August 20, 2003. On October 24, 2013, Dr. Burgesser's MMI/IR credentials expired and have not been renewed.
5. Dr. Burgesser received 16 division warning letters between 2008 and 2013 for administrative violations related to DD assignments.
6. 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. 14-116 HCP) of one injured employee's case for which Dr. Burgesser provided health care services as a treating physician.

**Medical Quality Review No. 14-116 HCP**

7. Dr. Burgesser initiated her care and treatment of an injured employee in January 2012, eight days after the injury date, and continued treatment until April 2013. Dr. Burgesser previously treated the same injured employee for a similar injury in 2007.
8. In 2012, Dr. Burgesser's treatments and/or evaluations of the injured employee were substantially different from those the commissioner finds to be fair and reasonable, based on inadequate medical record documentation of the following:
  - a. she did not provide any reference to her previous treatment of the injured employee for a similar injury in 2007;
  - b. she did not provide justification for ordering an MRI only eight days following the date of injury, contrary to the *Official Disability Guidelines* (ODG) recommendation;
  - c. she did not provide justification for requesting a lumbar epidural steroid injection; and
  - d. she did not document a treatment plan or any follow-up on the physical therapy she ordered.
9. In June 2012, Dr. Burgesser conducted an EMG/NCV test that was not reasonable or medically necessary in the absence of any other signs of radiculopathy.

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10. In April 2013, when Dr. Burgess filed a DWC Form-69 and narrative report that certified an MMI date and IR for the injured employee, she did not provide any explanation of the analysis performed to determine the MMI date.
11. Dr. Burgess voluntarily agrees to be permanently removed from the Texas workers' compensation system as a health care provider acting as a treating physician, or in any other role related to the treatment of injured employees in the system. In addition, Dr. Burgess agrees never to re-apply for the division's DD certification or MMI/IR credentials. Dr. Burgess currently resides in, and has relocated her medical practice to, the State of Wisconsin.
12. Dr. Burgess denies all the allegations set forth above but does not contest the entry of this order. This consent order and its requirements are entered into in the nature of compromise and as a settlement agreement.

#### 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. §§ 401.011, 401.021, 402.001, 402.00111, 402.00114, 402.00116, 402.00128, 408.0231, 415.003, 415.021, and 415.0215; 28 TEX. ADMIN. CODE §§ 130.1 and 180.26; and TEX. GOV'T CODE ANN. §§ 2001.051–2001.178.<sup>1</sup>
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. § 408.0231(c)(3), a doctor commits a violation if evidence from the division's medical records shows the doctor's treatments or evaluations are substantially different from those the commissioner finds to be fair and reasonable.
4. Pursuant to TEX. LAB. CODE ANN. § 415.003(2), (5), and (6), a health care provider commits an administrative violation if the person: administers an improper, unreasonable, or medically unnecessary treatment or service; violates a commissioner rule; or fails to comply with a provision of the Texas Workers' Compensation Act.

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<sup>1</sup> All references to the Texas Labor Code (TLC) and the Texas Administrative Code (TAC) that relate to the findings of fact regarding violations, as set forth in this consent order, are those that were in effect when the violations occurred. Other TLC and TAC references related to jurisdictional and/or procedural issues cite current law.

5. Dr. Burgesser violated TEX. LAB. CODE ANN. §§ 408.0231(c)(3), and 415.003(6), each time her treatments and/or evaluations were substantially different from those the commissioner found to be fair and reasonable based on inadequate medical record documentation .
6. Dr. Burgesser violated TEX. LAB. CODE ANN. § 415.003(2) and (6) when she conducted an EMG/NCV test that was not reasonable or medically necessary.
7. Pursuant to 28 TEX. ADMIN. CODE § 130.1(d)(1)(B)(iii), the narrative report that accompanies the DWC Form-69 must include an explanation of the analysis performed to find whether MMI was reached.
8. Dr. Burgesser violated TEX. LAB. CODE ANN. § 415.003(5), and 28 TEX. ADMIN. CODE § 130.1(d)(1)(B)(iii), when she filed a DWC Form-69 with narrative report that certified a MMI date without including an explanation of the analysis performed to determine the MMI date.


#### ORDER

It is agreed and ORDERED that after 60 days from the effective date of this consent order, Mary Frances Burgesser, M.D., will be permanently removed from the Texas workers' compensation system as a health care provider who provides health care services as a treating physician. After the 60 days, Mary Frances Burgesser, M.D., must not participate in treating, examining, and/or consulting with other physicians regarding the treatment of injured employees who are covered under the Texas workers' compensation system, and must not receive direct or indirect remuneration from the Texas workers' compensation system for any role related to the treatment of injured employees. As of the effective date of this consent order, Mary Frances Burgesser, M.D., must not accept any new injured employees as patients, but may continue to provide health care services to any existing injured employee patients for up to 60 days. During the 60 days following the effective date of this consent order, Mary Frances Burgesser, M.D., must transfer all of her current Texas Workers' compensation system patients to other providers.

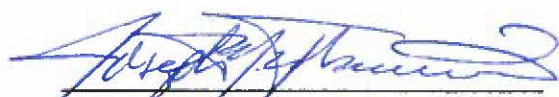
It is further agreed and ORDERED that Mary Frances Burgesser, M.D., will never re-apply for the DD certification or MMI/IR credentials in the Texas workers' compensation system. In the event Mary Frances Burgesser, M.D., should re-apply for the DD certification or MMI/IR credentials, the division will not grant either the certification or the credentials, and her re-application will constitute a violation of this consent order.

It is also agreed and ORDERED that this consent order resolves any investigations or complaints currently pending against Mary Frances Burgesser, M.D., before the Texas Department of Insurance - Division of Workers' Compensation on the effective date of this consent order.

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W. Ryan Brannan  
Commissioner of Workers' Compensation

Approved as to Form and Content:

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

