

No. 2324

OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF WORKERS' COMPENSATION

Date: FEB 28 2013

Subject Considered:

ASRA OBEROI, M.D.
Exam Works
12001 N. Central Expressway, Ste. 800
Dallas, TX 75243-3730

CONSENT ORDER
TDI ENFORCEMENT FILE NO. 1475

General remarks and official action taken:

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

WAIVER

Dr. Oberoi acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Dr. Oberoi 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. Oberoi is a physician licensed by the State of Texas on November 5, 1994. She holds Texas Medical Board License No. J6550.
2. Dr. Oberoi 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 April 3, 2007. Dr. Oberoi's most recent certification renewals for both DD and MMI/IR assignments were issued on June 22, 2011, and remain effective until June 22, 2013.
3. Dr. Oberoi was not classified in the 2007, 2009, or 2011 Performance Based Oversight (PBO) assessments.

4. Dr. Oberoi received two Warning Letters in 2009 for a late reply to a division letter of clarification, and for the late scheduling of a DD examination.

Medical Quality Review No. 12-82 DD

5. 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) of one injured employee's (IE) DD examination for which Dr. Oberoi assigned an MMI date and IR.
6. The IE's multiple injuries in a motor vehicle accident occurred in September 2007. The IE suffered trauma consisting of fractures to the left ankle, left wrist, right knee, and right hip socket with an accompanying right hip dislocation. Subsequently, in 2007 and 2008, the IE had post-injury surgical repairs of the right hip, right knee, and left ankle.
7. Dr. Oberoi performed the DD examination on November 20, 2009. Initially, Dr. Oberoi determined the IE had not yet reached MMI and declined to assign an IR, though she did opine on an anticipated MMI date of February 20, 2010.
8. On December 15, 2009, the division issued a letter of clarification (LOC) to Dr. Oberoi notifying her that the IE had reached statutory MMI on September 14, 2009. The division asked if Dr. Oberoi concurred and, if so, to assign an IR. Dr. Oberoi agreed and assigned an IR of 6% whole person impairment.
9. Dr. Oberoi's physical examination and medical history review of the IE was inadequate and incomplete because:
 - a. she did not include an evaluation of the IE's fracture to the left small finger phalanx;
 - b. she did not include any consideration or discussion of the IE's post-injury surgical repairs (right hip, right knee, and left ankle) since the date of injury;
 - c. she did not inquire about or report on the IE's status at the time of the examination with regard to ambulatory aids; and
 - d. she did not correctly identify a relevant CT scan of the injured anatomy of the left ankle. Dr. Oberoi identified it as an image of the left "knee."

10. Dr. Oberoi's IR assignment was incorrectly calculated because:
 - a. she did not include any evaluation of the IE's fracture to the left small finger phalanx; and
 - b. she did not apply AMA Guides to the Evaluation of Permanent Impairment, 4th Edition (AMA Guides) correctly in her assessment of the IE's right knee injury. Table 41, page 78, shows that a "mild," 4%, impairment should be assigned for a knee flexion of less than 110 degrees. Contrary to this, Dr. Oberoi measured the IE's post-surgical right knee flexion at 90 degrees and assigned a 0% impairment.
11. Dr. Oberoi did not assign an MMI date, and did not identify the reasons for not assigning an MMI date in her initial narrative report.
12. Dr. Oberoi did not provide any specific clinical details regarding the neurological testing she performed and her analysis of findings, and for which she assigned 0% impairment ratings. Dr. Oberoi only reported the neurological testing in her addendum to the initial report.

CONCLUSIONS OF LAW

Based upon the foregoing findings of fact, the commissioner of workers' compensation makes the following conclusions of law¹:

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, 414.002, 415.003, 415.021, and 415.0215; 28 TEX. ADMIN. CODE §§ 126.7, 130.1, 130.6, 180.1, 180.21, 180.22, 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. § 402.00128(b)(7), and 28 TEX. ADMIN. CODE § 180.26(h).
3. Pursuant to TEX. LAB. CODE ANN. § 414.002(a)(5), the division shall monitor for compliance with the Texas Workers' Compensation Act, commissioner rules, and other laws relating to workers' compensation, the conduct of persons subject to the Texas Workers' Compensation Act, including health care providers.

¹ 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 in 2009 when the violations occurred. Other TLC and TAC references related to jurisdictional and/or procedural issues cite current law.

4. Pursuant to TEX. LAB. CODE ANN. § 415.0215, the division may impose sanctions against any person regulated by the division under this subtitle.
5. Pursuant to TEX. LAB. CODE ANN. § 415.003(5) and (6), a health care provider commits an administrative violation if the person: violates a commissioner rule; or fails to comply with a provision of the Texas Workers' Compensation Act.
6. Pursuant to TEX. LAB. CODE ANN. § 415.021(a), a person commits an administrative violation if the person violates, fails to comply with, or refuses to comply with the Texas Workers' Compensation Act, or a rule, order, or decision of the commissioner. In addition to any sanction, administrative penalty, or other remedy authorized by the Texas Workers' Compensation Act, 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.
7. Pursuant to 28 TEX. ADMIN. CODE § 126.7 (j), the designated doctor shall review the employee's medical records, including an analysis of the employee's medical condition and functional abilities, as well as the employee's medical condition and history as provided by the injured employee, and shall perform a complete physical examination.
8. Pursuant to 28 TEX. ADMIN. CODE § 130.1(b)(4)(C), the certifying doctor shall assign a specific date that MMI has been reached.
9. Pursuant to 28 TEX. ADMIN. CODE § 130.1(c)(2)(B)(i), a doctor shall assign an IR in accord with the AMA Guides, 4th Edition, after October 15, 2001.
10. Pursuant to 28 TEX. ADMIN. CODE § 130.1(c)(3)(A), the doctor assigning an IR shall identify objective clinical or laboratory findings of permanent impairment for the current compensable injury.
11. Pursuant to 28 TEX. ADMIN. CODE § 130.1(c)(3)(B), the doctor assigning an IR shall document specific laboratory or clinical findings of an impairment.
12. Pursuant to 28 TEX. ADMIN. CODE § 130.1(c)(3)(C), the doctor assigning an IR shall analyze specific clinical and laboratory findings of an impairment.
13. Pursuant to 28 TEX. ADMIN. CODE § 130.1(c)(3)(D), the doctor assigning an 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%) impairment ratings; and (ii) a description of how the findings relate to and compare with the criteria described in the applicable chapter of the AMA Guides.

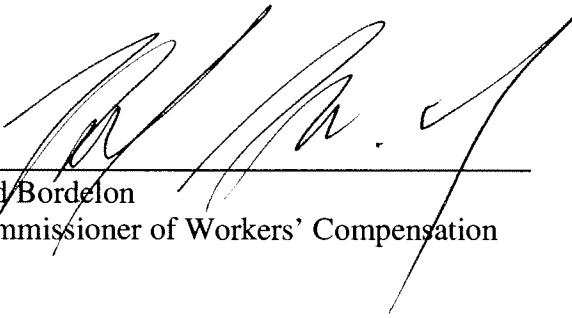
14. Pursuant to 28 TEX. ADMIN. CODE § 130.1(d)(1)(B), certification of MMI and assignment of an IR for the current compensable injury requires completion of the Report of Medical Evaluation and a narrative report that must include: (iii) findings of the certifying examination, including both normal and abnormal findings related to the compensable injury and an explanation of the analysis performed to find whether MMI was reached; (iv) a narrative history of the medical condition that outlines the course of the injury and correlates the injury to the medical treatment; (v) current clinical status; and (vi) diagnosis and clinical findings of permanent impairment as stated in subsection (c)(3).
15. Pursuant to 28 TEX. ADMIN. CODE § 130.6(b)(1), when there has been no prior certification of MMI, the designated doctor shall evaluate the injured employee for MMI, and if the designated doctor finds that the employee has not reached MMI, the doctor shall identify the reason(s) that the designated doctor does not believe the employee to have reached MMI.
16. Pursuant to 28 TEX. ADMIN. CODE § 180.26(a)(5) the division may impose sanctions on any system participant if that system participant commits an administrative violation, including restrictions on appointments or reviews.
17. Pursuant to 28 TEX. ADMIN. CODE § 180.26(b), the division may impose sanctions against a doctor for any criteria the commissioner considers relevant including deletion or suspension from the designated doctor list.
18. Pursuant to 28 TEX. ADMIN. CODE § 180.26(c), the division may impose restrictions on appointments or reviews.
19. Pursuant to 28 TEX. ADMIN. CODE § 180.26(d), in addition to the sanctions listed in subsections (b) and (c), the division may impose any other sanction or remedy allowed under the Texas Workers' Compensation Act or division rules, including but not limited to an administrative penalty of up to \$25,000 per violation against a person who commits an administrative violation.
20. Dr. Oberoi violated 28 TEX. ADMIN. CODE § 126.7 (j) when she: (1) failed to include an evaluation of the IE's left finger injury; (2) failed to include any consideration of the IE's post-injury surgical repairs; (3) failed to inquire about the IE's prior or current reliance on ambulatory aids; (4) failed to correctly identify a relevant CT scan of IE's injured anatomy; and (5) failed to include and analyze all of the IE's injuries and medical records for the IR determination.
21. Dr. Oberoi violated 28 TEX. ADMIN. CODE § 130.1(b)(4)(C) when she failed to assign an MMI date in her initial DD examination report.

22. Dr. Oberoi violated 28 TEX. ADMIN. CODE § 130.1(c)(2)(B)(i) when she failed to follow Table 41 in the AMA Guides, 4th Edition, in her assignment of an IR for the IE's right knee which indicated an impairment for the documented range of motion.
23. Dr. Oberoi violated 28 TEX. ADMIN. CODE § 130.1(c)(3)(A) when she failed to identify objective data and clinical findings in her narrative report regarding: (1) the IE's left finger injury; and (2) the neurological testing that she performed.
24. Dr. Oberoi violated 28 TEX. ADMIN. CODE § 130.1(c)(3)(B) when she failed to document any specific clinical findings regarding: (1) the IE's left finger injury; (2) the IE's post-surgical results; and (3) the neurological testing that she performed.
25. Dr. Oberoi violated 28 TEX. ADMIN. CODE § 130.1(c)(3)(C) when she failed to analyze specific clinical findings regarding the neurological testing she performed and for which she assigned 0% impairments.
26. Dr. Oberoi violated 28 TEX. ADMIN. CODE § 130.1(c)(3)(D) when she failed to describe and explain her clinical findings in the neurological testing that resulted in 0% impairment ratings, and how these results were analyzed and compared with criteria in the AMA Guides.
27. Dr. Oberoi violated 28 TEX. ADMIN. CODE § 130.1(d)(1)(B) when she failed to: (1) provide any findings from neurological testing and any analysis of why she could not assign and MMI in her initial narrative report; (2) provide any discussion of the IE's medical and treatment history related to the injury, including post-injury surgeries; (3) provide any inquiry and discussion about the IE's prior or current reliance on ambulatory aids; and (4) provide a complete picture of the IE's current impairment that was based on all of the injuries for which she was responsible for evaluating.
28. Dr. Oberoi violated 28 TEX. ADMIN. CODE § 130.6(b)(1) when, after reporting in her initial report that the IE had not reached MMI, she failed to identify the reasons for not assigning an MMI date.
29. Dr. Oberoi violated TEX. LAB. CODE ANN. §§ 415.003(5) and (6), and 415.021(a), each time she violated a division rule.

ORDER


It is therefore ORDERED, that on the effective date of this consent order, the following terms and conditions will apply:

1. Asra Oberoi, M.D., agrees to defer her current Texas Department of Insurance – Division of Workers' Compensation (TDI-DWC) DD certification, and TDI-DWC authorization to certify MMI dates and assign IRs, from the effective date of this consent order until June 22, 2013.
2. No certificates showing Asra Oberoi, M.D.'s, successful completion of TDI-DWC DD and/or MMI/IR certification training or testing during the deferral period may be submitted for credit recognized by the TDI-DWC.
3. After June 22, 2013, Asra Oberoi, M.D., may again seek DD certification and/or MMI/IR certification authorization, pursuant to 28 TEX. ADMIN. CODE §§ 127.100 and 180.23.
4. In addition to the requirements set forth in 28 TEX. ADMIN. CODE §§ 127.100 and 180.23, prior to obtaining new DD certification and/or MMI/IR certification authorization, Asra Oberoi, M.D., must attend and successfully complete: (1) the Designated Doctor Basics training course, and (2) the Designated Doctor Workshop training course, and any required testing, as offered by the TDI-DWC.



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 FORT BEND §

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

"My name is, Asra Oberoi, 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 law and acknowledge the jurisdiction of the Texas commissioner of workers' compensation.

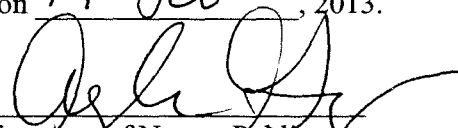
I voluntarily enter into this consent order and consent to the issuance and service of this consent order."



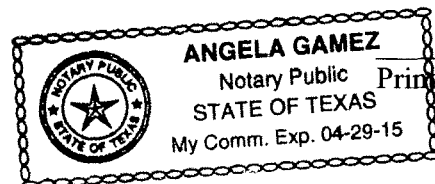
Affiant

SWORN TO AND SUBSCRIBED before me on 19 Feb, 2013.

(NOTARY SEAL)



Signature of Notary Public



Angela Gamez

Printed Name of Notary Public