

No. 2850

OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF WORKERS' COMPENSATION

Date: NOV 19 2013

Subject Considered:

JACKIE DEAN STEPHENSON, M.D.
88 Briggs St., Ste. 245
San Antonio, Texas 78224-1270

CONSENT ORDER
TDI ENFORCEMENT FILE NO. 492

General remarks and official action taken:

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

WAIVER

Dr. Stephenson acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Dr. Stephenson 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. Stephenson is a health care provider, board certified in Urology, who provides medical treatment and care to injured employees in the Texas workers' compensation system. He holds Texas Medical License No. D0310, which was issued on August 18, 1962.
2. Dr. Stephenson was not selected to be tiered in the 2009 or 2011 Performance Based Oversight (PBO) assessments. Dr. Stephenson was classified as average tier in the 2007 PBO assessment.
3. The division, as authorized by TEX. LAB. CODE ANN. § 414.002, monitors system participants to determine compliance with the Texas Workers' Compensation Act and rules promulgated by the commissioner of workers' compensation.
4. 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 two medical quality reviews (MQR) of three medical cases where Dr. Stephenson provided medical treatment and care to injured employees.

Medical Quality Review #10-SC-142

Patient No. 1

5. Dr. Stephenson initially evaluated Patient No. 1 on March 5, 2009, following an injury to his back occurring in October of 2007. Dr. Stephenson treated him until at least October 6, 2010.
6. Dr. Stephenson did not document:
 - a. the patient's significant preexisting depression and seizure disorder; significant since depression has been implicated in delaying recovery after minor injuries;
 - b. the quantity and justification for the prolonged use of medications prescribed; and,
 - c. his rationale for recommending spine surgery for this patient.
7. Dr. Stephenson treated Patient No. 1 for a prolonged period of time despite an absence of objective physical or radiological findings to support injury to the physical structure of the body.

Patient No. 2

8. Patient No. 2 injured her neck and back in December of 2008. Dr. Stephenson initially saw her on March 12, 2009, and diagnosed the patient with cauda equina syndrome with bowel and bladder incontinence based solely on the patient's subjective complaints.
9. Dr. Stephenson's treatment did not promote recovery or enhance the injured employee's ability to return to employment.
 - a. Dr. Stephenson prescribed multiple medications, including Schedule II opioids, despite an absence of evidence of cauda equina or nerve root compression;
 - b. Dr. Stephenson prescribed multiple medications, including Schedule II opioids, without properly documenting his justification for the medications prescribed; and,
 - c. Dr. Stephenson treated Patient No. 2 beyond the recommended ODG number of visits and failed to explain his departure from the ODG guidelines.

10. Patient No. 2 did not show significant improvement in pain and function over the 15 month period that Dr. Stephenson treated her.

Medical Quality Review #12-150-HCP

Patient No. 3

11. Dr. Stephenson treated Patient No. 3 for bilateral carpal tunnel syndrome (CTS) from March 9, 2011 to January 4, 2012.
12. Dr. Stephenson prescribed a combination of benzodiazepines and opioids (Valium/Hydrocodone) without following the ODG or adequately documenting his departure from ODG recommendations.
13. Dr. Stephenson provided treatment that did not promote recovery or enhance the injured employee's ability to return to employment.
14. This 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. Stephenson 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. §§ 401.021, 402.001, 402.00111, 402.00114, 402.00116, 402.00128, 408.023, 408.0231, 413.002, 413.0511, 413.05115, 413.0512, 414.002, 414.007, 415.003, 415.021, 415.0215, and 415.023; 28 TEX. ADMIN. CODE §§ 180.22 and 180.26; and TEX. GOV'T CODE ANN. §§ 2001.051 – 2001.178.¹
2. The commissioner of workers' compensation 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. §§ 415.0215 and 408.0231, and 28 TEX. ADMIN. CODE § 180.26, the commissioner of workers' compensation may impose a range of sanctions against any person regulated by the division, which includes the authority to

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 at the time the violations occurred. TEX. LAB. CODE ANN. and TEX. ADMIN. CODE references related to jurisdictional and/or procedural issues cite current law.

deprive a person of the right to practice before the division or of the right to receive remuneration under the Act.

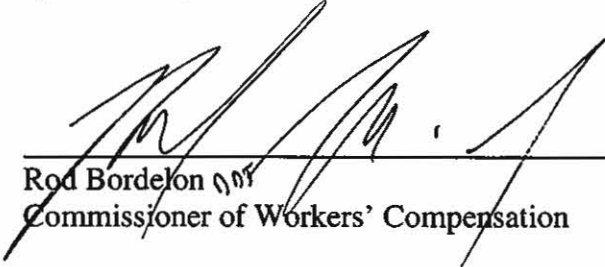
4. Pursuant to 28 TEX. ADMIN. CODE §180.22 (a), health care providers shall provide all health care reasonably required by the nature of the injury as and when needed to:
 - (1) cure or relieve the effects naturally resulting from the compensable injury;
 - (2) promote recovery; or,
 - (3) enhance the ability of the injured employee to return to or retain employment.
5. Pursuant to 28 TEX. ADMIN. CODE § 180.22(c)(2) a health care provider shall maintain efficient utilization of health care.
6. Pursuant to TEX. LAB. CODE ANN. § 408.0231(c)(3), the criteria for recommending or imposing sanctions may include anything the commissioner of workers' compensation considers relevant, including evidence from the division's medical records that the applicable doctor's diagnoses, treatments, evaluations, or impairment ratings are substantially different from those the commissioner finds to be fair and reasonable based on either a single determination or a pattern of practice.
7. Pursuant to TEX. LAB. CODE ANN. § 415.003(2), (4), (5), and (6), a health care provider commits an administrative violation if the person: administers improper, unreasonable, or medically unnecessary treatment or services; violates the division's fee and treatment guidelines; violates a commissioner rule; or fails to comply with a provision of the Texas Workers' Compensation Act.
8. Pursuant to 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. The administrative penalty shall not exceed \$25,000 per day per occurrence. Each day of noncompliance constitutes a separate violation.
9. Dr. Stephenson violated 28 TEX. ADMIN. CODE § 180.22(a)(1) by providing treatment and medications to Patient No. 1 for a prolonged period of time that did not cure or relieve the effects of the injury.
10. Dr. Stephenson violated 28 TEX. ADMIN. CODE § 180.22(a)(2), by failing to provide health care to Patient Nos. 1, 2 and 3 reasonably required by the nature of the injury as and when needed to promote recovery.
11. Dr. Stephenson violated 28 TEX. ADMIN. CODE § 180.22(a)(3), by providing health care to Patient Nos. 2 and 3, including multiple medications, that did not enhance the ability of Patient Nos. 2 and 3 to return to work.

12. Dr. Stephenson violated 28 TEX. ADMIN. CODE §180.22(c)(2) by failing to maintain an efficient utilization of health care through extensive and prolonged treatment without adequate documentation.
13. Dr. Stephenson violated TEX. LAB. CODE ANN. 408.0231(c)(3) by treating Case Nos. 1-3, in a manner substantially different from that which the commissioner finds to be fair and reasonable by:
- a. failing to document Patient No. 1's significant preexisting depression and seizure disorder; significant since depression has been implicated in delaying recovery after minor injuries;
 - b. failing to document the quantity and justification for the prolonged use of medications prescribed for Patients 1 and 2; and,
 - c. not following the ODG or adequately documenting an explanation for departing from the ODG recommendations.
14. Dr. Stephenson violated TEX. LAB CODE ANN. § 415.003(2) by:
- a. providing a combination of drugs to Patient No. 1, which was not medically necessary or reasonably required; and,
 - b. prescribing a combination of drugs to Patient No. 3, which was not medically necessary or reasonably required.

ORDER

It is ORDERED that Jackie Dean Stephenson, M.D., will not seek or receive remuneration from the Texas workers' compensation system for the care and treatment of any new injured employees from the date of this Consent Order.

Further, it is ORDERED that Jackie Dean Stephenson, M.D., shall be removed from the Texas Workers' Compensation system as a Health Care Practitioner, will not seek or receive remuneration from, and will permanently cease participating or practicing in, the Texas workers' compensation system as of December 31, 2013.



Rod Bordelon
Commissioner of Workers' Compensation

Approved as to Form and Content:



John Heisler
Staff Attorney, Compliance Division
Texas Department of Insurance

AFFIDAVIT

STATE OF TEXAS

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COUNTY OF BEVIL

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Before me, the undersigned authority, personally appeared the affiant, Jackie Dean Stephenson, M.D., who being by me duly sworn, deposed as follows:

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

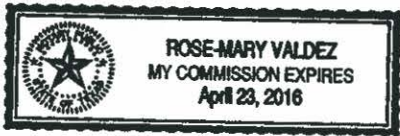
I waive rights provided by the Texas Labor Code and other applicable law and acknowledge the jurisdiction of the Texas commissioner of workers' compensation.

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

Jackie D. Stephenson *JD*
Affiant

SWORN TO AND SUBSCRIBED before me on 9/23, 2013.

(NOTARY SEAL)



Rose Mary Valdez
Signature of Notary Public
Rose Mary Valdez
Printed Name of Notary Public