

No. DWC - 11 - 0070

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

Date: JUL 22 2011

Subject Considered:

ANTHONY FRANCIS VALDEZ, M.D.
1145-A Ranger
El Paso, TX 79907

CONSENT ORDER
DISCIPLINARY ACTION
TDI ENFORCEMENT FILE NO. 55572

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 Anthony Valdez, M.D. ("Dr. Valdez"). The Texas Department of Insurance, Division of Workers' Compensation Staff ("Division Staff") alleges that Dr. Valdez 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. Valdez 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 § 180.26(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, 408.023, 413.016, 414.002, 414.003, 415.003, 415.0035, 415.008, 415.021, and 415.023; and 28 TEX. ADMIN. CODE §§ 180.1, 180.2, 180.8, 180.20, 180.21, 180.22, 180.23, and 180.26¹; and TEX. GOV'T CODE ANN. §§ 2001.051–2001.178.

¹ Citations to 28 TEX. ADMIN. CODE Ch. 180 throughout this order, with the exception of 28 TEX. ADMIN. CODE § 180.26(h), refer to the rules effective prior to the most recent amendments made effective January 9, 2011.

WAIVER

Dr. Valdez 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. Valdez 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:

Dr. Valdez's Denial to the Approved Doctor List (ADL)²

1. Dr. Valdez was denied admission to the ADL.
2. Dr. Valdez's denial to the ADL became final on August 31, 2007.
3. Dr. Valdez was not admitted to the ADL either by action of the Texas Workers' Compensation Commission (TWCC) or the Division or by agreement before September 1, 2007.
4. Dr. Valdez was not reinstated or restored by TWCC or the Division to the ADL before September 1, 2007.

Care Provided After Denial to the ADL

5. Dr. Valdez provided direct or indirect health care services to injured employees after being denied admission to the ADL on August 31, 2007.
6. Dr. Valdez received direct or indirect remuneration for workers' compensation health care services provided to injured employees after being denied admission to the ADL on August 31, 2007.

Other Considerations

7. 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. Valdez of resolving this dispute through administrative or judicial proceedings.

² On September 1, 2007, the ADL was repealed. However, the ADL was in place at the time of the violation.

8. This Order does not apply to emergency cases, and "emergency" shall be defined by 28 TEX. ADMIN. CODE § 133.2.

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, 408.023, 413.016, 414.002, 414.003, 415.003, 415.0035, 415.008, 415.021, and 415.023; and 28 TEX. ADMIN. CODE §§ 180.1, 180.2, 180.8, 180.20, 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 § 180.26(h).
3. Dr. Valdez 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. 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 Act or a rule, order, or decision of the commissioner. In addition to any sanctions, administrative penalty, or other remedy authorized by the Act, 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.
5. 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.
6. Dr. Valdez violated TEX. LAB. CODE § 408.023(r) by directly or indirectly providing health care to injured employees after he was denied admission to the Approved Doctor List on August 31, 2007.
7. Dr. Valdez violated TEX. LAB. CODE § 408.023(r) by receiving direct or indirect remuneration for providing health care services to injured employees after he was denied admission to the Approved Doctor List on August 31, 2007.

8. Pursuant to TEX. LAB. CODE ANN. § 415.003(5), a health care provider commits an administrative violation each time he or she violates a commissioner's rule.
9. Dr. Valdez violated 28 TEX. ADMIN. CODE § 180.26(d)(1), because of his violation of the Statute, Rules, or a commission decision or order or agreement.
10. Pursuant to TEX. LAB. CODE ANN. § 415.003(6), a health care provider commits an administrative violation if the person fails to comply with a provision of the Act. Therefore, Dr. Valdez committed an administrative violation each time Dr. Valdez violated TEX. LAB. CODE ANN. § 408.023(r)(1)(B)-(r)(2) by directly or indirectly providing health care services to injured employees after being denied to the ADL and directly or indirectly receiving remuneration for health care services provided to injured employees after Dr. Valdez was denied to the ADL and was not reinstated or restored to the ADL before September 1, 2007.
11. In addition to administrative violations under TEX. LAB. CODE ANN. § 415.003(6), each time Dr. Valdez provided health care after being denied to the ADL, and each time Dr. Valdez received remuneration for such services after being denied to the ADL constitutes separate violations under TEX. LAB. CODE ANN. § 415.021(a).

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, effective immediately upon the entry date of this Order, Anthony Francis Valdez, M.D. shall cease and desist from participating in the Texas workers' compensation system as a network and non-network health care provider. "Health care provider" has the meaning given under TEX. LAB. CODE ANN. § 401.011(22).

IT IS FURTHER ORDERED that, effective immediately upon the entry date of this Order, Anthony Francis Valdez, M.D. shall cease and desist indefinitely from participating in the Texas workers' compensation system as a network and non-network health care practitioner. "Health care practitioner" has the meaning given under TEX. LAB. CODE ANN. § 401.011(21). Therefore, Anthony Francis Valdez, M.D. shall not directly or indirectly bill for or receive direct or indirect remuneration for health care services provided to workers' compensation injured employees.

DWC - 11 - 0070

IT IS FURTHER ORDERED that, in addition to any money judgment and/or restitution that may be ordered by the United States District Court, El Paso Division, or any other administrative agency, Anthony Francis Valdez, M.D. shall pay an administrative penalty in the amount of ONE HUNDRED THOUSAND DOLLARS AND ZERO CENTS (\$100,000.00). Said administrative penalty shall be paid in full on or before 365 days from July 1, 2011.


Anthony Francis Valdez, M.D. may elect to pay in monthly installments, varying installments, or one lump sum so long as the entire administrative penalty is paid in full within the period stated herein. Payment(s) 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.

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

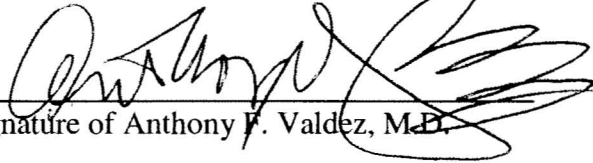
FOR THE STAFF:



Stephen Chen
Staff Attorney, Enforcement Division
Texas Department of Insurance

DWC - 11 - 0070

AGREED, ACCEPTED, and EXECUTED on this 15 day of July, 2011 by:



Signature of Anthony F. Valdez, M.D.

