

No. 2327

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

Date: FEB 28 2013

Subject Considered:

DAREY ALLEN PHILBRICK, M.D.
400 S. Old Highway 81, Bldg. A1
Kyle, Texas 78640-5420

DEFAULT ORDER
DISCIPLINARY ACTION
SOAH DOCKET NO. 454-13-1947.C1
TDI ENFORCEMENT FILE NO. 1276

General remarks and official action taken:

The commissioner of workers' compensation considers the matter of whether disciplinary action should be taken against Darey Allen Philbrick, M.D. (Dr. Philbrick). The Texas Department of Insurance, Division of Workers' Compensation seeks to remove Dr. Philbrick from the Texas workers' compensation system as a health care practitioner and to delete him from the division's designated doctor list because he no longer holds a Texas medical license. It is further alleged that such conduct constitutes grounds for the imposition of sanctions as authorized by TEX. LAB. CODE ANN. ch. 415, TEX. LAB. CODE ANN. § 408.0231 and 28 TEX. ADMIN. CODE § 180.26.

The commissioner of workers' compensation has jurisdiction over this matter pursuant to TEX. LAB. CODE ANN. §§ 401.011, 402.001, 402.00111, 402.00114, 402.00116, 402.00128, 408.0231, 408.1225, 415.021, and 415.0215; and 28 TEX. ADMIN. CODE §§ 180.22 and 180.26, and TEX. GOV'T CODE ANN. §§ 2001.051–2001.178. The commissioner of workers' compensation has authority to informally dispose of this case pursuant to the provisions of 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.

The commissioner of workers' compensation, after review and due consideration, adopts the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Dr. Philbrick held Texas medical license No. J6662 which was issued on November 5, 1994. Dr. Philbrick's Texas medical license was cancelled on June 8, 2012.
2. Dr. Philbrick was a "health care practitioner" as defined by TEX. LAB. CODE ANN. § 401.011(21).
3. Dr. Philbrick is a designated doctor in the Texas Workers' Compensation system and was last certified to assign Impairment Ratings on January 20, 2011.
4. Dr. Philbrick was not assessed for Performance Based Oversight in 2007, 2009, or 2011.
5. The division's computer records show that the last known address provided to the division by Dr. Philbrick in writing was 400 S. Old Highway 81, Bldg. A1, Kyle, Texas 78640-5420.
6. On November 29, 2012, the division sent a Notice of Violation (NOV) to Dr. Philbrick pursuant to TEX. LAB. CODE ANN. § 415.032(a) and 28 TEX. ADMIN. CODE § 180.8.
7. Pursuant to 28 TEX. ADMIN. CODE § 180.8(b), the NOV included a summary of the duty the division believed Dr. Philbrick failed to fulfill, a summary of the facts that established a violation occurred, a description of the sanction the division intended to assess, and information about the rights, obligations and procedures for Dr. Philbrick to file a written answer or request a hearing.
8. The NOV alleged Dr. Philbrick violated provisions of the Texas Labor Code and Texas Administrative Code by being convicted of a crime, and, pursuant to TEX. LAB. CODE ANN. § 408.0231 and 28 TEX. ADMIN. CODE § 180.26, asked that Dr. Philbrick be removed from the Texas Workers' Compensation system as a health care practitioner and designated doctor.
9. The November 29, 2012, NOV was sent to Dr. Philbrick at 400 S. Old Highway 81, Bldg. A1, Kyle, Texas 78640-5420 by certified mail, return receipt requested.
10. Dr. Philbrick received the NOV on November 30, 2012.
11. Pursuant to TEX. LAB. CODE ANN. § 415.032(b) and 28 TEX. ADMIN. CODE § 180.8(c), no later than the 20th day after the date on which notice was received, Dr. Philbrick was required to either remit the amount of the penalty to the division or submit to the division a written request for a hearing.

12. The 20th day after the date the notice was received fell on December 20, 2012. Therefore, pursuant to 1 TEX. ADMIN. CODE §155.7, Dr. Philbrick was to either agree to the proposed sanction or submit to the division a written request for hearing by December 20, 2012.
13. Dr. Philbrick failed to agree to the proposed sanction to the division or submit to the division a written request for hearing by December 20, 2012.
14. Pursuant to 28 TEX. ADMIN. CODE § 180.8(c), if the charged party fails to respond to the NOV within 20 days of receipt of the notice, the division shall schedule a hearing at SOAH and provide notice of the hearing to the charged party in accordance with 28 TEX. ADMIN. CODE § 148.5.
15. A Notice of Hearing was sent to Dr. Philbrick on January 14, 2013, at his last known mailing address by first class mail and certified mail, return receipt requested.
16. The Notice of Hearing informed Dr. Philbrick of the allegations against him, the intended action, the right to appear and be represented by counsel, the time and place of the hearing, the statutes and rules involved, and the ability of the division to obtain a default order against him should he fail to file a written response.
17. The Notice of Hearing contained the warnings to Dr. Philbrick that are required by 28 TEX. ADMIN. CODE § 180.8 and 1 TEX. ADMIN. CODE § 155.501.
18. Dr. Philbrick failed to file a written response to the Notice of Hearing within 20 days of the date the Notice of Hearing was mailed.
19. A disposition by default may be entered pursuant to 28 TEX. ADMIN. CODE § 180.8(e) if a charged party fails to file a written response.
20. In accordance with 28 TEX. ADMIN. CODE § 180.8, disposition by default requires the issuance of an Order against Dr. Philbrick in which the allegations against him in the Notice of Hearing are deemed admitted as true.
21. On June 8, 2012, Dr. Philbrick entered into an agreed order with the Texas Medical Board to voluntarily surrender his Texas medical license.

CONCLUSIONS OF LAW

1. The Commissioner of Workers' Compensation has jurisdiction over this matter pursuant to TEX. LAB. CODE ANN. §§ 401.011, 402.001, 402.00111, 402.00114, 402.00116, 402.00128, 408.0231, 408.1225, 415.021, and 415.0215; and 28 TEX. ADMIN. CODE §§ 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. §§ 401.021 and 402.00128(b)(7), and 28 TEX. ADMIN. CODE § 180.8.
3. The division sent the Notice of Hearing, in this matter to the last known address of Dr. Philbrick as reflected in the division's records and as evidenced by the attached affidavit. By such means, Dr. Philbrick was afforded proper and timely notice of the hearing.
4. The division's allegations in the Notice of Hearing are deemed admitted as true pursuant to 28 TEX. ADMIN. CODE § 180.8.
5. In accordance with TEX. LAB. CODE ANN. §§ 408.0231 and 415.0215, and 28 TEX. ADMIN. CODE § 180.26, the Commissioner of Workers' Compensation may impose a sanction against any person regulated by the division if that person has a suspension or other relevant practice restriction of the doctor's license by an appropriate licensing authority.
6. Dr. Philbrick's Texas medical license was cancelled on June 8, 2012.
7. Based upon the Findings of Fact and Conclusions of Law stated above, a disposition by default is proper pursuant to 28 TEX. ADMIN. CODE § 180.8.

Based upon the foregoing conclusions of law, the commissioner of workers' compensation is of the opinion that Darey Allen Philbrick, M.D. shall be removed from the Texas Workers' Compensation system as a health care practitioner or designated doctor. Therefore, he shall not participate in treating, examining, and/or consulting with other physicians regarding injured employees who are covered under the Texas Workers' Compensation system. Additionally, Darey Allen Philbrick, M.D. shall not receive direct or indirect remuneration from the Texas Workers' Compensation system.

IT IS, THEREFORE, ORDERED by the commissioner of workers' compensation that Darey Allen Philbrick, M.D. shall be removed from the Texas Workers' Compensation system as a Health Care Practitioner and from the designated doctor list, and his authority to certify maximum medical improvement and assign impairment ratings is revoked.



Rod Bordelon
Commissioner of Workers' Compensation

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STATE OF TEXAS §
COUNTY OF TRAVIS §

Affidavit

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

“My name is Michelle Quartermaine and I am employed by the Texas Department of Insurance. I am of sound mind, capable of making this affidavit, and have personal knowledge of these facts which are true and correct.

I have reviewed the Texas Department of Insurance’s records concerning Darey Allen Philbrick, M.D. I have confirmed that the last mailing address provided to the department by Darey Allen Philbrick, M.D. in writing was 400 S. Old Highway 81, Bldg. A1, Kyle, Texas 78640-5420.

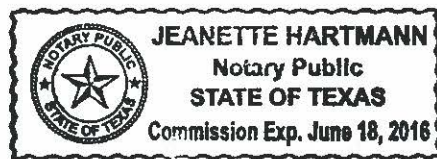
I have confirmed that the file maintained by the Enforcement Section of the Compliance Division contains a notice of hearing dated January 14, 2013, filed with the State Office of Administrative Hearings.

I have confirmed that a certified letter, return receipt requested, and a first class mailing, both containing a notice of hearing addressed to Darey Allen Philbrick, M.D.’s last known address, were deposited in the United States mails.

A copy of the certified mail log maintained by Enforcement is attached as exhibit A, and a copy of the signed certified mail form is attached as exhibit B.”

Michelle Quartermaine, Affiant

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



Jeanette Hartmann
Signature of Notary Public