

No. **DWC-10-0016**

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

Date: **MAR 09 2010**

Subject Considered:

DR. WILLIAM H. LINDSEY
1302 Teasley Lane
Denton, TX 76205-7946

CONSENT ORDER
DISCIPLINARY ACTION
TDI ENFORCEMENT FILE NO. 55299

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 Dr. William H. Lindsey, M.D. ("Dr. Lindsey"). The Texas Department of Insurance, Division of Workers' Compensation Staff ("Division Staff") alleges that Dr. Lindsey 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. Lindsey 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 § 180.8(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, 408.0041, 408.123, 414.002, 414.003, 415.003, 415.021, and 415.023; and 28 TEX. ADMIN. CODE §§ 126.7, 130.1, 130.3, 130.6, 180.1, 180.2, 180.3, 180.7, 180.8, 180.10, 180.21, 180.22, 180.23, and 180.26; and TEX. GOV'T CODE ANN. §§ 2001.051-2001.178.

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WAIVER

Dr. Lindsey 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. Lindsey 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:

System Participant – Certifying Doctor

1. In accordance with 28 TEX. ADMIN. CODE § 130.1(a)(1), only an authorized doctor may certify Maximum Medical Improvement (“MMI”), determine whether there is permanent impairment, and assign an impairment rating.
2. In accordance with 28 TEX. ADMIN. CODE § 130.1(a)(1)(A)(i)-(iii), doctors serving in the following roles may be authorized: the treating doctors (or a doctor to whom the treating doctor has referred the employee for evaluation of maximum medical improvement and/or permanent whole body impairment in the place of the treating doctor), a designated doctor, and a required medical examination doctor selected by the carrier and approved by the commission after a designated doctor has performed a maximum medical improvement and/or permanent whole body impairment exam.
3. In accordance with 28 TEX. ADMIN. CODE § 130.1(a)(1)(B)(i)-(ii), a doctor serving in one of the roles described in subsection 28 TEX. ADMIN. CODE § 130.1(a)(1)(A), is authorized as follows: a doctor whom the commission has certified to assign impairment ratings or otherwise given specific permission by exception to, is authorized to determine whether an injured employee has permanent impairment, assign an impairment rating, and certify MMI; and a doctor whom the commission has not certified to assign impairment ratings or otherwise given specific permission by exception to is only authorized to determine whether an injured employee has permanent impairment and, in the event that the injured employee has no impairment, certify MMI.
4. In accordance with 28 TEX. ADMIN. CODE § 130.1(a)(3), a doctor who is authorized under this subsection to certify MMI, determine whether permanent impairment exists, and assign an impairment rating and who does, shall be referred to as the “certifying doctor.”

5. Dr. Lindsey is a certifying doctor.
6. Dr. Lindsey was last certified to assign impairment ratings on August 6, 2007.

Certification of Maximum Medical Improvement and Evaluation of Impairment Ratings

7. In accordance with TEX. LAB. CODE ANN. § 408.123(a), after an employee has been certified by a doctor as having reached maximum medical improvement, the certifying doctor shall evaluate the condition of the employee and assign an impairment rating.
8. In accordance with TEX. LAB. CODE ANN. § 408.123(b), a certifying doctor shall issue a written report certifying that maximum medical improvement has been reached, stating the employee's impairment rating, and provide it to the Division, the employee, and the insurance carrier.
9. In accordance with 28 TEX. ADMIN. CODE § 130.1(d)(1), certification of MMI and assignment of an impairment rating requires submission of a Report of Medical Evaluation, also known as the DWC Form-69.
10. In accordance with 28 TEX. ADMIN. CODE § 130.1(d)(2), the DWC Form-69 must be filed with the Division, employee, employee's representative, and the insurance carrier no later than the seventh working day after the later of the date of the certifying examination or the receipt of all of the medical information required by 28 TEX. ADMIN. CODE § 130.1.
11. Pursuant to 28 TEX. ADMIN. CODE § 130.1(d)(3), the DWC Form-69 must be filed with the carrier via facsimile or electronic transmission.
12. In accordance with 28 TEX. ADMIN. CODE § 130.1(e)(1)-(3), the certifying doctor shall maintain the original copy of the Report of Medical Evaluation and narrative as well as documentation of the date of the examination; the date any medical records necessary to make the certification of maximum medical improvement were received, and from whom the medical records were received; and the date, addressees, and means of delivery that reports required under 28 TEX. ADMIN. CODE § 130.1 were transmitted or mailed by the certifying doctor.

System Participant – Designated Doctor

13. A "designated doctor", as defined by TEX. LAB. CODE ANN. § 401.011(15), means a doctor appointed by mutual agreement of the parties or by the Division of Workers' Compensation ("Division") to recommend a resolution of a dispute as to the medical condition of an injured employee.

14. In accordance with 28 TEX. ADMIN. CODE § 180.21(b), in order to serve as a designated doctor, a doctor must be on the Designated Doctor List ("DDL").
15. In accordance with 28 TEX. ADMIN. CODE § 180.21(d)(1)-(4), to be on the DDL on or after January 1, 2007, the doctor shall at a minimum: meet the registration requirements, or the exceptions thereto, of 28 TEX. ADMIN. CODE § 180.21(c)(1) or, upon expiration or waiver of the Approved Doctor List ("ADL") in accordance with TEX. LAB. CODE ANN. § 408.023(k), comply with all successor requirements, including but not limited to financial disclosure under TEX. LAB. CODE ANN. § 413.041; have filed an application to be on the DDL, which must be renewed biennially; have successfully completed Division-approved training and examination on the assignment of impairment ratings using the currently adopted edition of the American Medical Association Guides, medical causation, extent of injury, functional restoration, return to work, and other disability management topics; and have had an active practice for at least three years during the doctor's career.
16. Dr. Lindsey is a designated doctor.
17. Dr. Lindsey was last approved to be on the Division's Designated Doctor List on August 6, 2007.

Assignment of a Designated Doctor

18. Pursuant to TEX. LAB. CODE ANN. § 408.0041(b), the Division assigns a designated doctor by selecting the next qualified doctor on the Division's Designated Doctor List that is available to examine the claimant. The Division shall assign a designated doctor not later than the 10th day after the date on which the request is approved, and the examination must be conducted not later than the 21st day after the date on which the Commissioner issues the order.
19. Pursuant to 28 TEX. ADMIN. CODE § 126.7(e), the Division, within 10 days after approval of a valid request, shall issue a written notice that assigns a designated doctor; requires an exam to be conducted on a date no earlier than 14 days, but no later than 21 days from the date of the written notice; and notify the designated doctor, the employee, the employee's representative, if any, and the insurance carrier that the designated doctor will be directed to examine the employee. The written notice shall indicate the designated doctor's name, license number, practice address and telephone number, and the date and time of the examination or the date range for the examination to be conducted; explain the purpose of the designated doctor examination; require the employee to submit to an examination by the designated doctor; and require the treating doctor and insurance carrier to forward all medical records.

20. After the Division selects a designated doctor, an Appointment Coordination Sheet ("ACS") is faxed to the selected doctor. The ACS is an offer of appointments to the designated doctor and gives an exam date range, place of exam, and the claimants requested to be examined.
21. The Division allows the designated doctor until 5 p.m. the next business day to respond to each ACS request.
22. It is a refusal of the appointments if the designated doctor fails to respond to the ACS request.
23. Pursuant to 28 TEX. ADMIN. CODE § 126.7(f), the designated doctor's office and the employee shall contact each other if there exists a scheduling conflict for the designated doctor appointment. The designated doctor or the employee who has the scheduling conflict must make the contact at least 24 hours prior to the appointment. The 24-hour requirement will be waived in an emergency situation (such as a death in the immediate family or a medical emergency). The rescheduled examination shall be set to occur within 21 days of the originally scheduled examination. Within 24 hours of rescheduling, the designated doctor shall contact the Division's field office and the insurance carrier with the time and date of the rescheduled examination. If the examination cannot be rescheduled within 21 days, the designated doctor shall notify the Division and the Division shall select a new designated doctor.

Designated Doctor's Role and Responsibilities

24. In accordance with TEX. LAB. CODE ANN. § 408.0041(a), a designated doctor may be called upon to perform medical examinations, as requested by an insurance carrier, employee, or the Division, to resolve any question about the impairment caused by the compensable injury, the attainment of maximum medical improvement ("MMI"), the extent of the employee's compensable injury, whether the injured employee's disability is a direct result of the work-related injury, the ability of the employee to return to work, and other similar issues.
25. In accordance with 28 TEX. ADMIN. CODE § 126.7(n), a designated doctor must file a report, as required by 28 TEX. ADMIN. CODE §§ 130.1 and 130.3, when the designated doctor determines that an employee has reached MMI, when the designated doctor assigns an impairment rating, or when the designated doctor determines that the employee has not reached MMI. The report must be sent to the insurance carrier, the employee, the employee's representative, if any, the treating doctor, and the Division.
26. In accordance with 28 TEX. ADMIN. CODE § 126.7(q), the designated doctor shall maintain accurate records, including the employee records, analysis (including supporting information), and narratives provided by the insurance carrier and

treating doctor, to reflect: the date and time of any designated doctor appointments scheduled with an employee; the circumstances regarding a cancellation, no-show or other situation where the examination did not occur as initially scheduled or rescheduled; the date of the examination; the date medical records were received from the treating doctor or any other person or organization; the date the medical evaluation report, including the narrative report described in subsection 28 TEX. ADMIN. CODE § 126.7 (n), was submitted to all parties; the name of all referral health care providers, date of appointments and reason for referral by the designated doctor; and the date the doctor contacted the Division for assistance in obtaining medical records from the insurance carrier or treating doctor.

27. In accordance with 28 TEX. ADMIN. CODE § 126.7(u)(1)-(2), the Division may contact the designated doctor if it determines that clarification is necessary to resolve an issue regarding the designated doctor's report. The Division, at its discretion, may request clarification from the designated doctor on issues the Division deems appropriate. To respond to the request for clarification, the designated doctor must be on the Division's DDL at the time the request is received by the Division. The designated doctor shall respond to the letter of clarification within five days of receipt. If in order to respond to the request for clarification, the designated doctor has to reexamine the injured employee, the doctor shall: respond to the request for clarification advising of the need for an additional examination within five days of receipt and provide copies of the response to the parties specified in subsection 28 TEX. ADMIN. CODE § 126.7 (p); and conduct the reexamination within 21 days from the request by the Division at the location of the original examination.

Complaints Filed Against Dr. Lindsey

Failure to file Letters of Clarification ("LOC") in a Timely Manner

28. Dr. Lindsey filed the LOC on October 13, 2008, or 90 days past the deadline. (Injured employee R.B.; Carrier No. 1166863X1; DWC No. XXXX5040)
 - a. The Division sent a LOC request to Dr. Lindsey on July 8, 2008.
 - b. The request was received by Dr. Lindsey on July 10, 2008
 - c. Dr. Lindsey was required to respond to the LOC request by July 15, 2008, five days after receipt.
29. Dr. Lindsey filed the LOC on October 17, 2008, or 45 days past the deadline. (Injured employee J.S.; Carrier No. 99H0000499905; DWC No. XXXX4537)
 - a. The Division sent a LOC request to Dr. Lindsey on August 19, 2008.

- b. Per 28 TEX. ADMIN. CODE § 102.5(d), the LOC request was deemed received five days after receipt, or on August 25, 2008.
- c. Dr. Lindsey was required to respond to the LOC request by September 2, 2008, five days after receipt.

Failure to file DWC-69's in a Timely Manner

- 30. Dr. Lindsey failed to file the DWC-69 with the Division, which was due on August 12, 2008. (Injured employee C.N.; Carrier No. 710479723; DWC No. XXXX2093)
 - a. Dr. Lindsey performed a maximum medical improvement designated doctor examination of the injured employee on August 1, 2008.
 - b. Dr. Lindsey had all necessary records prior to the date of the exam; therefore the exam was deemed complete on August 1, 2008.
 - c. The DWC-69 was required to be filed with the Division, the carrier, and the injured worker no later than seven working days after the exam, or by August 12, 2008.
- 31. Dr. Lindsey filed the DWC-69 with the Division on August 25, 2008, or 17 days past the deadline. (Injured employee M.A.; Carrier No. 949936608; DWC No. XXXX2267)
 - a. Dr. Lindsey performed a maximum medical improvement designated doctor examination of the injured employee on July 30, 2008.
 - b. Dr. Lindsey had all necessary records prior to the date of the exam; therefore the exam was deemed complete on July 30, 2008.
 - c. The DWC-69 was required to be filed with the Division, the carrier, and the injured worker no later than seven working days after the exam, or by August 8, 2008.

Failure to Timely Conduct an Exam after a Cancelled DD Appointment

- 32. Dr. Lindsey rescheduled the designated doctor examination for July 22, 2008, or 22 days past the original examination date. (Injured employee C.H.; Carrier No. YLLC39245; DWC No. XXXX7052).
 - a. Dr. Lindsey was originally scheduled to examine the injured employee on June 10, 2008.

- b. Dr. Lindsey rescheduled the appointment to July 22, 2008.
- c. Dr. Lindsey was required to reschedule the appointment within 21 days of the original exam date, or by June 30, 2008.

Refusing to Schedule or Perform a Designated Doctor Appointment.

- 33. Dr. Lindsey refused five Appointment Coordination Sheets (ACS) between March 19, 2008 and April 11, 2008, resulting in ten appointment refusals.
 - a. On March 19, 2008, Dr. Lindsey was faxed an ACS for three injured workers (P.L., B.B., E.M.).
 - b. No response was received by Dr. Lindsey.
 - c. On March 24, 2008, Dr. Lindsey was notified via facsimile that the appointments would be rescheduled with another designated doctor.
 - d. On April 9, 2008, Dr. Lindsey was faxed an ACS for a reexamination of injured worker R.C.
 - e. On April 9, 2008, Dr. Lindsey refused the appointment and requested the injured worker be re-designated.
 - f. On April 9, 2008, Dr. Lindsey was faxed an ACS for a reexamination of injured worker D.G.
 - g. On April 10, 2008, Dr. Lindsey refused the appointment and requested the injured worker be re-designated.
 - h. On April 10, 2008, Dr. Lindsey was faxed an ACS for two injured workers (M.C. and D.C.).
 - i. On April 11, 2008, Dr. Lindsey refused the appointments and requested the injured workers be re-designated.
 - j. On April 11, 2008, Dr. Lindsey was faxed an ACS for three injured workers (J.R., L.W., and D.B.).
 - k. Dr. Lindsey refused the appointments and requested the injured workers be re-designated.

Aggravating Factors

Harm to Injured Workers

34. Pursuant to TEX. LAB. CODE ANN. § 408.121 (a)–(b), an employee's entitlement to impairment income benefits begins on the day after the date the employee reaches MMI and the insurance carrier must begin paying impairment income benefits not later than the fifth day after receiving the doctor's report certifying MMI.
35. Pursuant to TEX. LAB. CODE ANN. § 408.122, a claimant may not recover impairment income benefits unless there is evidence of impairment based on objective clinical or laboratory finding, which a designated doctor may determine if disputed.
36. The payments of impairment income benefits to injured employees may have been delayed as a result of Dr. Lindsey's inability to timely submit the LOC and DWC-69's.
37. Dr. Lindsey's failure to timely file the LOCs and DWC-69s delayed the dispute resolution process.

Mitigating Factors

38. Dr. Lindsey has no prior disciplinary history.
39. During the time of these violations Dr. Lindsey employed a scheduling company, Western Medical, to perform the administrative duties required of him by the Act and Rules.
40. Dr. Lindsey acknowledges that although he delegated his administrative duties to Western Medical, it is his ultimate responsibility to ensure compliance with the Act and Rules.
41. In lieu of an administrative penalty, Dr. Lindsey agrees that his name may be deleted from the Designated Doctor List and he will cease and desist from practicing before the Division as a designated doctor.
42. In lieu of an administrative penalty, Dr. Lindsey agrees that he will cease and desist from practicing before the Division as a certifying doctor, whereby he is banned from certifying MMI and assigning impairment ratings.

Other Considerations

43. 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. Lindsey of resolving this dispute through administrative or judicial proceedings.
44. The violations committed by Dr. Lindsey were for failing to fulfill his administrative duties required of a designated doctor. These allegations do not reflect on his quality of care.

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, 408.0041, 408.123, 414.002, 414.003, 415.003, 415.021, and 415.023; and 28 TEX. ADMIN. CODE §§ 126.7, 130.1, 130.3, 130.6, 180.1, 180.2, 180.3, 180.7, 180.8, 180.10, 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 § 180.8(h).
3. Dr. Lindsey 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. In accordance with 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.
5. In accordance with TEX. LAB. CODE ANN. § 415.023(a), a person who commits an administrative violation under Section 415.001, 415.002, 415.003, or 415.0035 as a matter of practice is subject to an applicable rule adopted under TEX. LAB. CODE ANN. § 415.023(b) in addition to the penalty assessed for the violation.
6. In accordance with 28 TEX. ADMIN. CODE § 180.21(m), in addition to the grounds for deletion or suspension from the ADL or for issuing other sanctions against a

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doctor under 28 TEX. ADMIN. CODE § 180.26, the Commissioner shall delete or suspend a doctor from the Designated Doctor List, or otherwise sanction a designated doctor for noncompliance with the requirements of this section or if any of the following conduct occurs:

- a. Four refusals within a 90 day period, or four consecutive refusals to perform within the required time frames, a Division requested appointment for which the doctor is qualified.
 - b. failure to timely respond as a pattern of practice to a request for clarification from the Division regarding an examination.
 - c. any of the factors listed in 28 TEX. ADMIN. CODE § 180.21(i) that would allow for denial of admission to the DDL;
 - d. other violation of applicable statutes or rules while serving as a designated doctor.
7. 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.
8. In accordance with TEX. LAB. CODE ANN. § 415.003(5), a health care provider, like a designated doctor, commits an administrative violation each time he or she violates a commissioner's rule.
- a. Dr. Lindsey violated 28 TEX. ADMIN. CODE § 126.7(u) each time he failed to file the letter of clarification in a timely manner.
 - b. Dr. Lindsey violated 28 TEX. ADMIN. CODE § 126.7(f) each time he failed to timely conduct an exam after a cancelled designated doctor appointment.
 - c. Dr. Lindsey violated 28 TEX. ADMIN. CODE § 130.1(d)(2), each time he failed to file the DWC Form-69 in a timely manner.
9. Dr. Lindsey failed to timely file a letter of clarification in two separate instances.
10. Dr. Lindsey failed to timely conduct an exam after a cancelled designated doctor appointment in one instance.
11. Dr. Lindsey failed to timely file the DWC Form-69 with the Division in two separate instances.

12. Dr. Lindsey refused five Appointment Coordination Sheets (ACS) between March 19, 2008 and April 11, 2008, resulting in ten appointment refusals within 90 days.

Based on the Findings of Fact and Conclusions of Law above, the Commissioner of Workers' Compensation has determined that the appropriate disposition is the imposition of the following sanctions and full compliance with the terms of this Order.

IT IS THEREFORE ORDERED that Dr. William H. Lindsey be removed from the Designated Doctor List and that his name be deleted from the Designated Doctor List on or before thirty (30) days from the date of this Order.

IT IS ALSO ORDERED that Dr. William H. Lindsey shall cease and desist from practicing before the Division as a designated doctor on or before thirty (30) days from the date of this Order, and that he is henceforth deprived of the right to practice before the Division as a Designated Doctor.

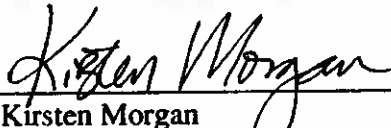
IT IS ALSO ORDERED that Dr. William H. Lindsey shall cease and desist from practicing before the Division as a certifying doctor on or before thirty (30) days from the date of this Order, and that he is henceforth deprived of the right to certify maximum medical improvement and/or assign impairment ratings.

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

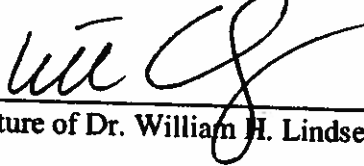
FOR THE STAFF:



Kirsten Morgan
Staff Attorney, Enforcement Division
Texas Department of Insurance

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AGREED, ACCEPTED, and EXECUTED on this 22 day of Feb., 2010 by:



Signature of Dr. William H. Lindsey

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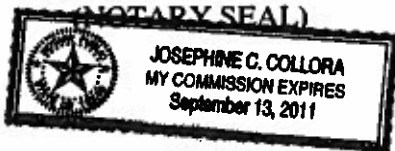
STATE OF TEXAS §
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COUNTY OF TRAVIS §

BEFORE ME, Josephine C. Collora, a notary public in and for the State of Texas, on this day personally appeared William Lindsey known to me or proven to me through TX DOL to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed, who being by me duly sworn, deposed as follows:

1. "My name is Dr. William H. Lindsey. I am of sound mind, capable of making this statement, and personally acquainted with the facts stated in this Consent Order.
2. I have read the terms and conditions contained within this Consent Order, and I have knowingly and voluntarily entered into it.
3. I consent to the issuance and service of this Consent Order, and I am executing the same for the purposes and consideration described herein."

William Lindsey
Signature
William Lindsey
Typed/Printed Name

Given under my hand and seal of office this 22 day of February, 2010.



Josephine C. Collora
Notary Public, State of Texas
My commission expires: 9-13-2011