

No. DWC - 12 - 0171

**OFFICIAL ORDER**  
*of the*  
**TEXAS COMMISSIONER OF WORKERS' COMPENSATION**

Date: OCT 12 2012

**Subject Considered:**

**OTMAR WOLF ALBRAND, M.D.**  
400 S Old Hwy 81 Bldg A1  
Kyle, TX 78640-5420

**CONSENT ORDER**  
TDI ENFORCEMENT FILE NO. 61007

**General remarks and official action taken:**

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

**WAIVER**

Dr. Albrand acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Dr. Albrand 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. Albrand is a Designated Doctor in the Texas workers' compensation system and was last certified to assign Maximum Medical Improvement (MMI) and Impairment Ratings (IR) on May 11, 2011.
2. Dr. Albrand was classified as an average tier performer in 2007 Performance Based Oversight (PBO), and he was not classified in 2009 or 2011 PBO.

**Medical Quality Review (MQR) #11-29 DD**

3. 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 complaint-based medical quality review of one case where Dr. Albrand performed a Designated Doctor exam on an injured employee.
4. After completing the review, the Office of the Medical Advisor determined the following:

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- a. Dr. Albrand submitted an inappropriate report due to an insufficient examination and analysis of medical records.
  - b. Dr. Albrand diagnosed the injured employee with cauda equina syndrome and cervical myelopathy, but the brief physical examination he performed was not sufficient to have arrived at these diagnoses.
  - c. When assigning an impairment rating (IR), Dr. Albrand placed undue emphasis on subjective complaints of the injured employee in the absence of objective data from the exam or in the medical records.
  - d. Dr. Albrand did not adequately address the issues ordered by the division.
  - e. Dr. Albrand failed to refer the injured employee for relevant additional testing to resolve the issues in dispute.
  - f. Dr. Albrand recommended unreasonable and unnecessary additional tests, such as a bone scan; MRI of the brain, cervical spine, and thoracic spine; and EMG/NCV tests. However, he did not wait on the results of these tests to assign an IR.
  - g. Dr. Albrand's IR lacked sufficient justification or documentation and was not supported by the medical evidence.
5. Dr. Albrand's assignment of IR in this case was later overturned in a Contested Case Hearing held on October 27, 2009.

## 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, 408.0041, 408.0231, 408.1225, 408.123, 408.124, 413.002, 413.0511, 413.0512, 415.003, 415.021, and 415.0215; 28 TEX. ADMIN. CODE §§ 126.7, 130.1, 180.21, and 180.26<sup>1</sup>; and TEX. GOV'T CODE ANN. §§ 2001.051 – 2001.178.
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)<sup>2</sup>.
3. In accordance with TEX. LAB. CODE ANN. § 415.021, the commissioner of workers' compensation may assess an administrative penalty against a person who commits an administrative violation.

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<sup>1</sup> Throughout this consent order, except as otherwise noted, citations to rules refer to the rules that were in effect at the time the violations occurred. For reference, chapter 180 was amended, effective January 9, 2011.

<sup>2</sup> This citation refers to the version of 28 TEX. ADMIN. CODE § 180.26 that is presently in effect.

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4. In accordance with TEX. LAB. CODE ANN. § 415.0215, the division may impose sanctions against any person regulated by the division under the Act.
5. Pursuant to TEX. LAB. CODE ANN. § 415.003(6), Dr. Albrand committed an administrative violation each time he failed to comply with a provision of the Texas Workers' Compensation Act.
6. Pursuant to TEX. LAB. CODE ANN. § 415.003(5), Dr. Albrand committed an administrative violation each time he violated a commissioner rule.
7. Dr. Albrand violated 28 TEX. ADMIN. CODE §§ 126.7(k)<sup>3</sup> and 130.1(c)(3)(F) by failing to perform additional relevant testing or refer an employee to other health care providers when necessary to determine the issue in question.
8. Dr. Albrand violated TEX. LAB. CODE ANN. § 408.124 and 28 TEX. ADMIN. CODE § 130.1(c) by improperly determining the IR.

ORDER

It is ORDERED that for one year from the execution date of this order, Dr. Albrand shall be suspended from the Designated Doctor List. During this suspension, Dr. Albrand must not accept designated doctor appointments nor perform designated doctor appointments.



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ROD BORDELON  
COMMISSIONER OF WORKERS' COMPENSATION

**FOR THE STAFF:**



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John Heister  
Staff Attorney, Compliance Division  
Texas Department of Insurance

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<sup>3</sup> 28 TEX. ADMIN. CODE § 126.7(k) was repealed effective February 1, 2011. For reference, the concepts contained within are now contained in Chapter 127.

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**AFFIDAVIT**

STATE OF Texas §

COUNTY OF Grayson §

Before me, the undersigned authority, personally appeared the affiant, Otmar Wolf Albrand, M.D., who being by me duly sworn, deposed as follows:

"My name is Otmar Wolf Albrand, 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 9/27, 2012.

(NOTARY SEAL)

  
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Signature of Notary Public

JOSUE ALVA  
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Printed Name of Notary Public

