

No. **2019** - **5830**

OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF WORKERS' COMPENSATION

Date: **JAN 03 2019**

Subject Considered:

FRANK HARVEY SWORDS, D.O.
1305 Airport Freeway Suite 101
Bedford, TX 76021-6603

CONSENT ORDER
TDI-DWC ENFORCEMENT FILE NO. 12988

General remarks and official action taken:

The commissioner of workers' compensation (the commissioner) considers whether disciplinary action should be taken against Frank Harvey Swords, D.O. (Dr. Swords).

WAIVER

Dr. Swords acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Dr. Swords 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 makes the following findings of fact:

1. Dr. Swords was granted a license by the Texas Medical Board on February 27, 1983. Dr. Swords holds Texas Medical License number G4213.
2. Dr. Swords was classified as "Poor" tier in the DWC Form-73 Completeness measure and "Average" tier in the DWC Form-73 Documentation measure in the 2013 Performance Based Oversight (PBO) assessments. Dr. Swords was classified as "Poor" tier in the DWC Form-73 Completeness and Documentation measure in the 2015 PBO assessments. Dr. Swords was classified as "Average" tier in the Completeness measure and "Poor" tier in the Documentation measure in the 2017 PBO assessment. Dr. Swords was not classified in the 2007, 2009, or 2011 PBO assessments.

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3. The Texas Department of Insurance, Division of Workers' Compensation (DWC), as authorized by TEX. LAB. CODE § 414.002, monitors system participants to determine compliance with the Texas Workers' Compensation Act and rules promulgated by the commissioner.

4. The division's Medical Advisor, whose duties are defined in TEX. LAB. CODE § 413.0511, and Medical Quality Review Panel (MQRP), as established pursuant to TEX. LAB. CODE § 413.0512, conducted a medical quality review of eight cases where Dr. Swords treated injured employees. One case was excluded because audit criteria were not met. Five of the remaining seven cases were referred to Enforcement and are the subject of this Consent Order.
5. In five cases, Dr. Swords failed to complete a Work Status Report (DWC Form-73) in the form and manner prescribed by DWC.
6. In five cases, Dr. Swords did not document or reference use or consideration of the Medical Disability Guidelines.
7. In five cases, Dr. Swords failed to provide an adequate description or explanation of how the injury prevented the injured employee from returning to work in any capacity.

ASSESSMENT OF PENALTY

8. The Work Status Report is a tool used to inform the insurance carrier, employer, and injured employee of the injured employee's ability to work so that proper medical treatment, medical benefits, and income benefits can be expeditiously afforded to injured employees.
9. Enforcement of the Work Status Report guidelines is necessary to encourage the safe and timely return of injured employees to productive roles in the workplace and to provide appropriate income and medical benefits in a manner that is timely and cost-effective.
10. Dr. Swords acknowledges harm to the system and agrees that the penalty assessed is reasonable.
11. In assessing the penalty for this case, the commissioner appropriately and fully considered the following factors set forth in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e):
 - the seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the prohibited act;
 - the history and extent of previous administrative violations;
 - the demonstrated good faith of the violator, including actions taken to rectify the consequences of the prohibited act;
 - the penalty necessary to deter future violations;
 - whether the administrative violation has negative impact on the delivery of benefits to an injured employee;
 - the history of compliance with electronic data interchange requirements;
 - other matters that justice may require, including but not limited to:
 - PBO assessments;
 - the promptness and earnestness of actions to prevent future violations;
 - self-report of the violation;

- the size of the company or practice;
 - the effect of a sanction on the availability of health care; and
 - evidence of heightened awareness of the legal duty to comply with the Texas Workers' Compensation Act and DWC rules; and
 - to the extent reasonable, the economic benefit resulting from the prohibited act.
12. Dr. Swords acknowledges that in assessing the penalty, the commissioner appropriately and fully considered the relevant applicable factors set forth in TEX. LAB. CODE § 415.021(c).
13. Dr. Swords acknowledges that this consent order sufficiently communicates information about the penalty, including the relevant statutes or rules violated, the conduct giving rise to the violations, and the factors considered in determining the penalty.

CONCLUSIONS OF LAW

The commissioner makes the following conclusions of law:

1. The commissioner has jurisdiction over this matter pursuant to TEX. LAB. CODE §§ 402.001, 402.00111, 402.00114, 402.00116, 402.00128, 414.002, and 414.004; 28 TEX. ADMIN. CODE § 180.26; and TEX. GOV'T CODE §§ 2001.051–2001.178.
2. The commissioner has authority to informally dispose of this matter as set forth under TEX. LAB. CODE § 402.00128(b)(7) and 28 TEX. ADMIN. CODE § 180.26(h).
3. Pursuant to TEX. LAB. CODE § 415.0215 and 28 TEX. ADMIN. CODE § 180.26, the commissioner may impose sanctions against a doctor who commits an administrative violation, including mandatory participation in training classes.
4. Pursuant to TEX. LAB. CODE § 415.021, in addition to any sanction, administrative penalty, or other remedy authorized by this subtitle, the commissioner may assess an administrative penalty against a person who commits an administrative violation.
5. Pursuant to 28 TEX. ADMIN. CODE § 129.5(b), the doctor shall file a Work Status Report in the form and manner prescribed by DWC.
6. Dr. Swords violated 28 TEX. ADMIN. CODE § 129.5, each time he failed to file a DWC Form-73 in the form and manner prescribed by DWC.
7. Pursuant to 28 TEX. ADMIN. CODE § 137.10(a), insurance carriers, health care providers, and employers shall use the disability duration values in the current edition of The Medical Disability Advisor, Workplace Guidelines for Disability Duration, excluding all sections and tables relating to rehabilitation, (MDA), published by the Reed Group, Ltd. (DWC return to work guidelines), as guidelines for the evaluation of expected or average return to work time frames.

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8. Pursuant to 28 TEX. ADMIN. CODE § 137.10(c)(1), DWC's return to work guidelines provide disability duration expectancies. DWC's return to work guidelines shall be presumed to be a reasonable length of disability duration and shall be used by the health care providers to establish return to work goals or a return to work plan for safely returning injured employees to medically appropriate work environments.
9. Dr. Swords violated 28 TEX. ADMIN. CODE § 137.10(a) and 28 TEX. ADMIN. CODE § 137.10(c)(1) each time he failed to consider the MDA when assessing return to work.
10. Pursuant to 28 TEX. ADMIN. CODE § 129.5(c)(4), the doctor shall be considered to have filed a complete Work Status Report if the report is filed in the form and manner prescribed by DWC, signed, and contains at a minimum an explanation of how the employee's workers' compensation injury prevents the employee from returning to work.
11. Dr. Swords violated 28 TEX. ADMIN. CODE § 129.5(c)(4) each time he failed to sufficiently provide an adequate description or explanation of how the injury prevented the employee from returning to work in any capacity.

ORDER

Frank Harvey Swords, D.O. is ORDERED:

1. To pay an administrative penalty of \$3,500 within 30 days from the date of this Order;
2. Purchase and maintain a current subscription to the MDA for two years following the date of this Order. Confirmation of the purchase of the first year of subscription must be provided to DWC within 14 days of the date of this Order and confirmation of the purchase of the second year subscription must be provided to DWC within 14 days of the one year anniversary date of this Order;
3. To attend and complete the KSTAR Medical Record Documentation course within 180 days from the date of this Order. Confirmation of the attendance and completion of the course must be provided to DWC within 14 days of completion; and
4. To complete a three hour Continuing Medical Education (CME) course titled *Graduated Return to Work* found at <http://osha.washington.edu> within 180 days following the date of this Order. Confirmation of the attendance and completion of the CME course must be provided to DWC within 14 days of completion.

Frank Harvey Swords, D.O. must mail the certificate of completion of the KSTAR Medical Record Documentation course, confirmation of the purchase of the current MDA, and certificate of completion of the CME to the Texas Department of Insurance, Attn: Mary Hughes, DWC Enforcement, 7551 Metro Center Drive, Suite #100, MS-11, Austin, Texas 78744.

The administrative penalty must be paid by company check, cashier's check, or money order made payable to the "State of Texas." Frank Harvey Swords, D.O. must mail the administrative penalty to the

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Texas Department of Insurance, Attn: DWC Enforcement, MC 9999, P.O. Box 149104, Austin, Texas,
78714-9104.



Cassie Brown
Commissioner of Workers' Compensation

JB

Approved as to Form and Content:



Andrés Durá
Staff Attorney, DWC Enforcement
Texas Department of Insurance

