

No. 3592

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

Date: OCT 22 2014

**Subject Considered:**

**GEORGE KENNETH MARSHALL, M.D.**  
717 N. 4<sup>th</sup> Street  
Longview, Texas 75601

**CONSENT ORDER**  
TDI ENFORCEMENT FILE NO. 7479

**General remarks and official action taken:**

The commissioner of workers' compensation considers whether disciplinary action should be taken against George Kenneth Marshall, M.D. (Dr. Marshall).

**WAIVER**

Dr. Marshall acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Dr. Marshall 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. Marshall is a health care provider who provides medical treatment and care to injured employees in the Texas workers' compensation system. He holds Texas Medical License No. E7662, which was issued on February 18, 1977.
2. Dr. Marshall was not selected to be tiered in the 2007, 2009, 2011, or 2013 Performance Based Oversight (PBO) assessments.

**Medical Quality Review #14-136 HCP**

3. The division, as authorized by TEX. LAB. CODE ANN. § 414.002, monitors system participants to determine compliance with the Texas Workers' Compensation Act and rules promulgated by the commissioner of workers' compensation.
4. 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 medical quality review (MQR) of one case where Dr. Marshall was the treating doctor for the injured employee.

5. The injured employee injured his back while lifting a large glass sliding door. He first sought treatment from Dr. Marshall on November 8, 2004.
6. Dr. Marshall provided improper, unreasonable, or medically unnecessary treatment or services when he prescribed opioids to the injured employee as evidenced by the following:
  - a. Dr. Marshall prescribed narcotic pain medications to the injured employee with no documented medical rationale;
  - b. Dr. Marshall failed to document meaningful physical exams or history of the injured employee before prescribing opioids;
  - c. Dr. Marshall escalated narcotic treatment of the employee with no documentation of clear treatment goals;
  - d. Dr. Marshall failed to document frequency of dose on Norco and Percocet prescriptions;
  - e. Dr. Marshall continued to prescribe the same treatments with narcotics over a period of nine years with no notable improvement in function; and,
  - f. Dr. Marshall's treatment of the injured worker lacked adequate documentation of effectiveness, tolerance, adverse effects, or potential for addiction and lacked pain contracts or drug screening.
7. Dr. Marshall provided improper, unreasonable, or medical unnecessary treatment when he treated the injured employee for a diagnosis not supported by the medical record. Specifically, Dr. Marshall continued to treat the injured employee for "Cauda Equina Syndrome," which ceased being the diagnosis after the emergency laminectomy decompression surgery in 2003.
8. Dr. Marshall did not provide all health care reasonably required by the nature of the injury as and when needed to cure or relieve the effects naturally resulting from the compensable injury, promote recovery, or enhance the ability of the injured employee to return to or retain employment when he:
  - a. Failed to reduce the pain or improve the function of the injured employee over the course of his treatment; and,
  - b. Failed to clearly establish therapeutic goals for the injured employee.

### 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, 408.021, 409.023, 408.0231, 413.002, 413.0511, 413.05115, 413.0512, 414.002, 414.007, 415.003, 415.021, and 415.0215; 28 TEX. ADMIN. CODE §§ 180.22 and 180.26; and TEX. GOV'T CODE ANN. §§ 2001.051 – 2001.178.<sup>1</sup>

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).
3. Pursuant to TEX. LAB. CODE ANN. § 415.021, the commissioner of workers' compensation may impose a range of sanctions against any person regulated by the division, including an administrative penalty.
4. Pursuant to TEX. Lab. Code Ann. §§ 415.0215 and 408.0231, and 28 TEX. ADMIN. CODE §180.26, the commissioner of workers' compensation may impose a range of sanctions against any person regulated by the division.
5. Pursuant to TEX. LAB. CODE ANN. § 415.003(2), a health care provider commits an administrative violation if the person administers improper, unreasonable, or medically unnecessary treatment or services.
6. Dr. Marshall violated Tex. Lab. Code Ann. § 415.003(2) and administered improper, unreasonable, or medically unnecessary treatment or services to the injured employee when he:
  - a. prescribed narcotic pain medications to the injured employee with no documented medical rationale;
  - b. failed to document meaningful physical exams or history of the injured employee before prescribing opioids;
  - c. escalated narcotic treatment of the employee with no documentation of clear treatment goals;
  - d. failed to document frequency of dose on Norco and Percocet prescriptions;
  - e. continued to prescribe the same treatments with narcotics over a period of nine years with no notable improvement in function; and,
  - f. treated the injured worker without adequate documentation of effectiveness, tolerance, adverse effects, or potential for addiction and lacking pain contracts or drug screening.

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<sup>1</sup> All references to the Texas Labor Code (TLC) and the Texas Administrative Code (TAC) that relate to the findings of fact regarding violations, as set forth in this consent order, are those that were in effect at the time the violations occurred. TEX. LAB. CODE ANN. and TEX. ADMIN. CODE references related to jurisdictional and/or procedural issues cite current law.

7. Dr. Marshall violated TEX. LAB. CODE ANN. § 415.003(2) and administered improper, unreasonable, or medically unnecessary treatment when he treated the injured employee for a diagnosis not supported by the medical record. Specifically, Dr. Marshall continued to treat the injured employee for "Cauda Equina Syndrome," which ceased being the diagnosis after the emergency laminectomy decompression surgery in 2003.
8. Pursuant to TEX. LAB. CODE ANN. § 408.021(a)(1)-(3) and 28 TEX. ADMIN. CODE § 180.22(a), health care providers shall provide all health care reasonably required by the nature of the injury as and when needed to:
  - (1) Cure or relieve the effects naturally resulting from the compensable injury;
  - (2) Promote recovery; or,
  - (3) Enhance the ability of the injured employee to return to or retain employment.
9. Dr. Marshall violated TEX. LAB. CODE ANN. § 408.021(a)(1)-(3) and 28 TEX. ADMIN. CODE § 180.22(a), by:
  - a. Failing to reduce the pain or improve the function of the injured employee over the course of his treatment; and,
  - b. Failing to clearly establish therapeutic goals for the injured employee.

### **ORDER**

It is ORDERED that from the date of this order, George Kenneth Marshall, M.D., will no longer accept any new Texas workers' compensation patients and will no longer participate in the Texas workers' compensation system, network or non-network, as a health care provider. Dr. Marshall will not participate in treating, examining, and/or consulting with other physicians regarding injured employees who are covered under the Texas Workers' Compensation system. Additionally, Dr. Marshall will not receive direct or indirect remuneration from the Texas Workers' Compensation system. This order does not apply to emergency cases, as defined by 28 TEX. ADMIN. CODE § 133.2.

George Kenneth Marshall, M.D., must wean and dismiss or refer to other physicians any remaining Texas workers' compensation patients not being treated by intrathecal pump within 90 days from the date of this order. Dr. Marshall must wean and dismiss or refer patients to another physician any patients Dr. Marshall is currently treating by intrathecal pump within 180 days from the date of this order. Within 10 days from the date of this order, Dr. Marshall will also send the Medical Advisor a list of all his current Texas workers' compensation patients, treated with an intrathecal pump, with a summary of their treatment, to the Texas Department of Insurance, Division of Workers Compensation - Office of the Medical Advisor 7551 Metro Center Dr., Suite 100, MS 41 Austin, Texas 78744 or fax to 512-490-1040.

If Dr. Marshall is unable to dismiss or refer any of the intrathecal pump patients, he must provide a written explanation to the Medical Advisor stating his efforts to wean or transfer the patient(s). The division may initiate a medical quality review (MQR) of any intrathecal patients that have not been dismissed or transferred by the 180th day from the date of this order, pursuant to TEX. LAB. CODE ANN. § 414.002(5). As a result of the MQR, the Medical Advisor may recommend to close the review with no further action (this may include an education letter), proceed with possible enforcement action, refer Dr. Marshall to the Texas Medical Board, or expand the scope of the investigation. Dr. Marshall must pay for the cost of the review at a rate of \$150.00 per hour. Dr. Marshall must submit the payment to the division within 10 working days following the billing date. Failure to pay the bill for the review, or failure to timely pay the bill for the review, is a violation of this consent order.



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W. Ryan Branman  
Commissioner of Workers' Compensation

Approved as to Form and Content:



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John Heisler  
Staff Attorney, Compliance Division  
Texas Department of Insurance

