

No. **DWC - 12 - 0089**

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

Date: **MAY 30 2012**

**Subject Considered:**

**RICKY MICHAEL MCSHANE, D.O.**  
321 West San Augustine  
Deer Park, Texas 77536-4027

**CONSENT ORDER**  
TDI ENFORCEMENT FILE NO. 61038

**General remarks and official action taken:**

The commissioner of workers' compensation considers whether disciplinary action should be taken against Ricky Michael McShane, D.O. (Dr. McShane).

**WAIVER**

Dr. McShane acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Dr. McShane 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. McShane holds Texas medical license number K2753, which was issued on August 9, 1997. Dr. McShane is a health care provider in the Texas workers' compensation system.
2. Dr. McShane is a designated doctor in the Texas workers' compensation system. Dr. McShane's certification as a designated doctor will expire on June 28, 2013.
3. Dr. McShane was not classified for performance based oversight (PBO) in the 2009 and 2011 assessments. Dr. McShane was classified as average tier in the 2007 PBO assessment.

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## **Failure to Timely File DWC Form-69**

4. Dr. McShane completed two designated doctor examinations on October 25, 2011. Dr. McShane was required to file DWC Form-69s and the narrative reports on or before November 3, 2011. Dr. McShane filed the forms six days late on November 9, 2011.
5. Dr. McShane completed a designated doctor examination on October 28, 2011. Dr. McShane was required to file DWC Form-69 and the narrative report on or before November 8, 2011. Dr. McShane filed the form six days late on November 13, 2011.
6. Dr. McShane completed a designated doctor examination on November 1, 2011. Dr. McShane was required to file DWC Form-69 and the narrative report on or before November 10, 2011. Dr. McShane filed the form six days late on November 16, 2011.

## **Failure to Timely File DWC Form-69 and Failure to Comply with a Division Order**

7. Dr. McShane completed four designated doctor examinations on August 18, 2011.
  - a. Dr. McShane was required to file DWC Form-69s and the narrative reports on or before August 29, 2011.
  - b. The division sent written requests for the DWC Form-69s and the narrative reports via certified mail, return receipt requested in September, October and December, 2011. Dr. McShane received the requests.
  - c. Dr. McShane failed to respond to the requests.
  - d. The division sent orders to Dr. McShane to produce the DWC Form-69s and the narrative reports via certified mail, return receipt requested in October and December 2011. Dr. McShane received the orders to produce.
  - e. Dr. McShane failed to file the DWC Form-69 and the narrative report. Another designated doctor was appointed on three cases.
8. Dr. McShane completed three designated doctor examinations on September 7, 2011.
  - a. Dr. McShane was required to file DWC Form-69s and the narrative reports on or before September 16, 2011.
  - b. The division sent written requests for the DWC Form-69s and the narrative reports via certified mail, return receipt requested in November 2011 and February 2012. Dr. McShane received the requests.

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- c. Dr. McShane failed to respond to the requests.
  - d. The division sent orders to Dr. McShane to produce the DWC Form-69s and the narrative reports via certified mail, return receipt requested in November 2011 and February 2012. Dr. McShane received the orders to produce.
  - e. Dr. McShane failed to file the DWC Form-69 and the narrative report. Another designated doctor was appointed on one case.
9. Dr. McShane completed two designated doctor examinations on September 8, 2011.
- a. Dr. McShane was required to file DWC Form-69s and the narrative reports on or before September 19, 2011.
  - b. The division sent written requests for the DWC Form-69s and the narrative reports via certified mail, return receipt requested in November 2011. Dr. McShane received the requests.
  - c. Dr. McShane failed to respond to the requests.
  - d. The division sent orders to Dr. McShane to produce the DWC Form-69s and the narrative reports via certified mail, return receipt requested in November 2011. Dr. McShane received the orders to produce.
  - e. Dr. McShane failed to file the DWC Form-69s and the narrative reports. Another designated doctor was appointed on both cases.

## **Refused to Schedule Four Designated Doctor Appointment Notifications within 90 Days**

10. Dr. McShane refused four designated doctor appointment notifications between November 21, 2011 and December 8, 2011.
- a. On November 21, 2011, Dr. McShane refused to schedule a designated doctor appointment for one injured employee.
  - b. On November 29, 2011, Dr. McShane refused to schedule a designated doctor appointment for one injured employee.
  - c. On December 7, 2011, Dr. McShane refused to schedule designated doctor appointments for five injured employees.
  - d. On December 8, 2011, Dr. McShane refused to schedule a designated doctor appointment for one injured employee.

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11. Dr. McShane agrees he will not re-credential and apply to be on the designated doctor list and will not certify maximum medical improvement and/or assign impairment ratings in the workers' compensation system for a period of one year from the date of this Order.

## 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. §§ 402.001, 402.00111, 402.00114, 402.00116, 402.00128, 402.072<sup>1</sup>, 413.002, 414.002, 415.003, 415.021 and 415.0215; 28 TEX. ADMIN. CODE §§ 127.10, 130.1, 180.21 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 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. §§ 402.072 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 Texas Department of Insurance, Division of Workers' Compensation (division).
4. In accordance with TEX. LAB. CODE ANN. § 415.021, in addition to any other provisions in this subtitle relating to violations, a person commits an administrative violation if the person violates, fails to comply with, or refuses to comply with this subtitle or a rule, order, or decision of the commissioner.
5. Pursuant to TEX. LAB. CODE ANN. § 414.002, the division shall monitor system participants for compliance with commissioner rules, this subtitle and other laws relating to workers' compensation.
6. Ricky Michael McShane, D.O. violated TEX. LAB. CODE ANN. §§ 415.003 and 415.021 by failing to comply with a commissioner rule.
7. Ricky Michael McShane, D.O. violated TEX. LAB. CODE ANN. § 415.021 by failing to comply with commissioner Orders.

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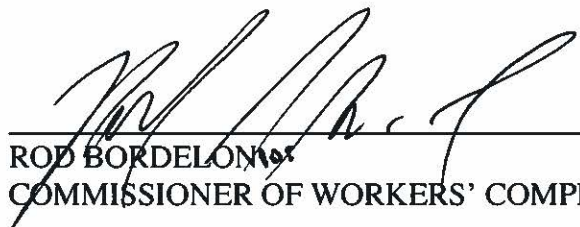
<sup>1</sup> TEX. LAB. CODE ANN. § 402.072 was repealed September 1, 2011. However, it was in effect at the time of some of these violations. TEX. LAB. CODE ANN. § 415.0215 was enacted September 1, 2011, to replace TEX. LAB. CODE ANN. § 402.072.

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8. Ricky Michael McShane, D.O. violated 28 TEX. ADMIN. CODE § 127.10 and 130.1 by failing to file the DWC Form-69 and narrative report within seven days of completing a designated doctor examinations.

ORDER

It is ORDERED that Ricky Michael McShane, M.D. will not re-credential and apply to be on the designated doctor list. It is ORDERED that Ricky Michael McShane, D.O. is removed as a designated doctor and is deprived of the right to certify maximum medical improvement and/or assign impairment ratings in the workers' compensation system for a period of one year from the date of this Order.

  
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ROD BORDELON  
COMMISSIONER OF WORKERS' COMPENSATION

Approved as to form and substance:

  
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Toya Lutz  
Staff Attorney, Compliance Division  
Texas Department of Insurance

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AFFIDAVIT

STATE OF TEXAS           §  
  §  
COUNTY OF Harris       §

Before me, the undersigned authority, personally appeared, the affiant, Ricky Michael McShane, D.O., who being by me duly sworn, deposed as follows:

"My name is Ricky Michael McShane, D.O. I am of sound mind, capable of making this statement, and have personal knowledge of these facts which are true and correct.

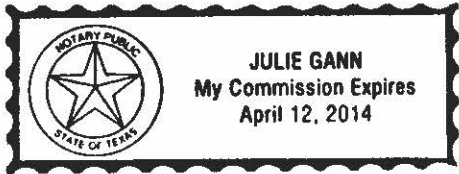
"I waive rights provided by the Texas Insurance Code and other applicable law and acknowledge the jurisdiction of the Texas commissioner of workers' compensation."

"I voluntarily enter into this Consent Order and consent to the issuance and service of this Consent Order."

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*Ricky Michael McShane*  
Affiant

SWORN TO AND SUBSCRIBED before me on May 23, 2012.

(NOTARY SEAL)



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*Julie Gann*  
Signature of Notary Public  
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*Julie Gann*  
Printed Name of Notary Public