



# TEXAS DEPARTMENT OF INSURANCE

## Division of Workers' Compensation - Medical Fee Dispute Resolution (MS-48)

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## MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

### GENERAL INFORMATION

**Requestor Name**

Memorial Compounding Pharmacy

**Respondent Name**

Electric Insurance Company

**MFDR Tracking Number**

M4-19-1646-01

**Carrier's Austin Representative**

Box Number 17

**MFDR Date Received**

November 20, 2018

### REQUESTOR'S POSITION SUMMARY

**Requestor's Position Summary:** "The carrier has received the attached bill and has not processed according to Texas Labor Code 408.027."

**Amount in Dispute:** \$1,059.66

### RESPONDENT'S POSITION SUMMARY

**Respondent's Position Summary:** "The compound medication in dispute in this matter was denied based on retrospective medical necessity."

**Response Submitted by:** Downs-Stanford, P.C.

### SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
June 22, 2018	Compound Medication	\$726.62	\$726.62
June 22, 2018	Gabapentin 300 mg Capsules	\$177.26	\$153.70
June 22, 2018	Cyclobenzaprine 10 mg Tablets	\$155.78	\$126.85
Total		\$1,059.66	\$1,007.17

### FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and applicable rules of the Texas Department of Insurance, Division of Workers' Compensation.

**Background**

- 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
- 28 Texas Administrative Code §134.502 sets out the procedures for pharmaceutical benefits.
- 28 Texas Administrative Code §134.503 sets out the fee guidelines for pharmaceutical services.
- 28 Texas Administrative Code §134.530 sets out the closed formulary requirements for claims not subject to certified networks.

5. The insurance carrier denied payment for the compound in question based on preauthorization.

### **Issues**

1. Is this dispute subject to dismissal based on medical necessity?
2. Is the insurance carrier's denial of payment based on preauthorization supported?
3. Is Memorial Compounding Pharmacy (Memorial) entitled to reimbursement for the compound in question?

### **Findings**

1. Memorial is seeking reimbursement for medications dispensed on June 22, 2018. In its position statement the insurance carrier argued that the disputed drugs were denied based on medical necessity.

The response from the insurance carrier is required to address only the denial reasons presented to the requestor the request for medical fee dispute resolution (MFDR) was filed with the division. Any new denial reasons or defenses raised shall not be considered for review.<sup>1</sup>

The submitted documentation does not support that a denial based on medical necessity was provided to Memorial before this request for MFDR was filed. Therefore, the division will not consider this argument in the current dispute review as this issue constitutes a new defense.

2. Per submitted explanations of benefits, the insurance carrier denied the disputed compound based on preauthorization. Preauthorization is only required for:
  - drugs identified with a status of "N" in the current edition of the ODG Appendix A<sup>2</sup>;
  - any compound that contains a drug identified with a status of "N" in the current edition of the ODG Appendix A; and
  - any investigational or experimental drug.<sup>3</sup>

Gabapentin 300 mg capsules and Cyclobenzaprine 10 mg tablets are not identified with a status of "N" in the current edition of the ODG, Appendix A.

The compound in question does not contain an ingredient identified with a status of "N" in the current edition of the ODG, Appendix A.

The determination of a service's investigational or experimental nature is determined on a case by case basis through utilization review.<sup>4</sup> Utilization review, includes a prospective, concurrent, or retrospective review to determine the experimental or investigational nature of health care services.<sup>5</sup>

Electric Insurance Company provided no evidence that the insurance carrier engaged in a prospective or retrospective utilization review to establish that the specific compound or drugs considered in this review are investigational or experimental.

Because the insurance carrier failed to perform utilization review on the disputed compound, the requirement for preauthorization based on a premise that the compound is investigational or experimental is not triggered in this case. The insurance carrier's preauthorization denial is therefore not supported.

3. Because the insurance carrier failed to sufficiently support its denial of reimbursement, Memorial is entitled to reimbursement.

The compound in dispute was billed by listing each drug included in the compound and calculating the charge for each drug separately.<sup>6</sup> Each ingredient is listed below with its reimbursement amount.<sup>7</sup> The calculation of the total allowable amount for the compound is as follows:

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<sup>1</sup> 28 Texas Administrative Code §133.307(d)(2)(F)

<sup>2</sup> *ODG Treatment in Workers' Comp (ODG) / Appendix A, ODG Workers' Compensation Drug Formulary*

<sup>3</sup> 28 Texas Administrative Code §134.530(b)(1)

<sup>4</sup> Texas Insurance Code §19.2005(b)

<sup>5</sup> Texas Insurance Code §4201.002(13)

<sup>6</sup> 28 Texas Administrative Code §134.502(d)(2)

<sup>7</sup> 28 Texas Administrative Code §134.503(c)

Drug	NDC	Generic(G) /Brand(B)	Price /Unit	Units Billed	AWP Formula	Billed Amt	Lesser of AWP and Billed
Meloxicam	38779274601	G	\$194.67	0.18	\$43.80	\$35.04	\$35.04
Flurbiprofen	38779036209	G	\$36.58	4.8	\$219.48	\$175.58	\$175.58
Tramadol	38779237409	G	\$36.30	6	\$272.25	\$217.80	\$217.80
Cyclobenzaprine	38779039509	G	\$46.33	1.8	\$104.24	\$83.39	\$83.39
Bupivacaine	38779052405	G	\$45.60	1.2	\$68.40	\$54.72	\$54.72
Ethoxy Diglycol	38779190301	G	\$0.34	3	\$1.28	\$1.03	\$1.03
Versapro Cream	38779252903	B	\$3.20	45.02	\$157.03	\$144.06	\$144.06
Fee	NA	NA	NA	NA	\$15.00	\$15.00	\$15.00
						Total	\$726.62

The calculation of the total allowable amount for Gabapentin 300 mg capsules and Cyclobenzaprine 10 mg tablets is as follows:

- Gabapentin 300 mg capsules:  $(1.3307 \times 90 \times 1.25) + \$4.00 = \$153.70$
- Cyclobenzaprine HCl 10 mg tablets:  $(1.092 \times 90 \times 1.25) + \$4.00 = \$126.85$

The total reimbursement is therefore \$1,007.17. This amount is recommended.

### Conclusion

For the reasons stated above, the Division finds that the requestor has established that additional reimbursement is due. As a result, the amount ordered is \$1,007.17.

### **ORDER**

Based on the submitted information, pursuant to Texas Labor Code Section 413.031 and 413.019 (if applicable), the division has determined the requestor is entitled to additional reimbursement for the disputed services. The division hereby ORDERS the respondent to remit to the requestor \$1,007.17, plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this order.

### Authorized Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Laurie Garnes  
Medical Fee Dispute Resolution Officer

\_\_\_\_\_  
April 26, 2019  
Date

### **YOUR RIGHT TO APPEAL**

Either party to this medical fee dispute has a right to seek review of this decision in accordance with Rule §133.307, effective May 31, 2012, *37 Texas Register 3833*, **applicable to disputes filed on or after June 1, 2012**.

A party seeking review must submit a **Request to Schedule a Benefit Review Conference to Appeal a Medical Fee Dispute Decision** (form **DWC045M**) in accordance with the instructions on the form. The request must be received by the division within **twenty** days of your receipt of this decision. The request may be faxed, mailed or personally delivered to the division using the contact information listed on the form or to the field office handling the claim. The party seeking review of the MFDR decision shall deliver a copy of the request to all other parties involved in the dispute at the same time the request is filed. **Please include a copy of the Medical Fee Dispute Resolution Findings and Decision** together with any other required information specified in 28 Texas Administrative Code §141.1(d).

**Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.**