

THIS DECISION HAS BEEN APPEALED. THE  
 FOLLOWING IS THE RELATED SOAH DECISION NUMBER:  
 SOAH DOCKET NO. 453-05-9158.M5

**MEDICAL DISPUTE RESOLUTION FINDINGS AND DECISION**  
**Retrospective Medical Necessity Dispute**

**PART I: GENERAL INFORMATION**

<b>Type of Requestor:</b> (X) HCP ( ) IE ( ) IC	<b>Response Timely Filed?</b> (X) Yes ( ) No
Requestor=s Name and Address  Cotton Merritt DC 2005B roadway Lubbock TX 79401	MDR Tracking No.: M5-05-2374-01
	TWCC No.:
	Injured Employee's Name:
Respondent's Name and Address      Rep Box # 54  Texas Mutual Insurance	Date of Injury:
	Employer's Name:
	Insurance Carrier's No.:

**PART II: SUMMARY OF DISPUTE AND FINDINGS**

Dates of Service		CPT Code(s) or Description	Did Requestor Prevail?
From	To		
6-4-04	2-7-05	99212-25, 99213, 97110, 97112, 97140	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

**PART III: MEDICAL DISPUTE RESOLUTION REVIEW SUMMARY, METHODOLOGY, AND/OR EXPLANATION**

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code and Commission Rule 133.308 (relating to Medical Dispute Resolution by Independent Review Organization), the Medical Review Division assigned an Independent Review Organization (IRO) to conduct a review of the medical necessity issues between the requestor and respondent.

The Division has reviewed the enclosed IRO decision and determined that the requestor did **not** prevail on the disputed medical necessity issues.

**PART IV: COMMISSION DECISION**

Based upon the review of the disputed healthcare services, the Medical Review Division has determined that the requestor is not entitled to reimbursement for the services involved in this dispute and is not entitled to a refund of the paid IRO fee.

Findings and Decision by:

7-26-05

Authorized Signature

Typed Name

Date

**PART V: INSURANCE CARRIER DELIVERY CERTIFICATION**

I hereby verify that I received a copy of this Decision in the Austin Representative's box.

Signature of Insurance Carrier: \_\_\_\_\_ Date: \_\_\_\_\_

**PART VI: YOUR RIGHT TO REQUEST A HEARING**

Either party to this medical dispute may disagree with all or part of the Decision and has a right to request a hearing. A request for a hearing must be in writing and the TWCC Chief Clerk of Proceedings/Appeals Clerk must receive it within 20 days of your receipt of this Decision (28 Texas Administrative Code § 148.3). This Decision was mailed to the health care provider and placed in the Austin Representative's box on \_\_\_\_\_. This Decision is deemed received by you five days after it was mailed and the first working day after the date the Decision was placed in the Austin Representative's box (28 Texas Administrative Code § 102.5(d)). A request for a hearing should be sent to: Chief Clerk of Proceedings/Appeals Clerk, P.O. Box 17787, Austin, Texas 78744 or faxed to (512) 804-4011. A copy of this Decision should be attached to the request.

The party appealing the Division's Decision shall deliver a copy of their written request for a hearing to the opposing party involved in the dispute.

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



**PROFESSIONAL  
ASSOCIATES**

**NOTICE OF INDEPENDENT REVIEW**

**NAME OF PATIENT:  
IRO CASE NUMBER:**

\_\_\_\_\_  
M5-05-2374-01

**NAME OF REQUESTOR:** Cotton D. Merritt, D.C.  
**NAME OF PROVIDER:** Cotton D. Merritt, D.C.  
**REVIEWED BY:** Board Certified in Chiropractics  
**IRO CERTIFICATION NO:** IRO 5288  
**DATE OF REPORT:** 07/13/05 (REVISED 07/20/05)

Dear Cotton Merritt, D.C.:

Professional Associates has been certified by the Texas Department of Insurance (TDI) as an independent review organization (IRO) (#IRO5288). Texas Insurance Code Article 21.58C, effective September 1, 1997, allows a patient, in the event of a life-threatening condition or after having completed the utilization review agent's internal process, to appeal an adverse determination by requesting an independent review by an IRO.

In accordance with the requirement for Texas Workers' Compensation Commission (TWCC) to randomly assign cases to IROs, TWCC has assigned your case to Professional Associates for an independent review. The reviewing physician selected has performed an independent review of the proposed care to determine if the adverse determination was appropriate. In performing this review, the reviewing physician reviewed relevant medical records, any documents utilized by the parties referenced above in making the adverse determination, and any documentation and written information submitted in support of the appeal.

The independent review was performed by a matched peer with the treating physician. This case was reviewed by a physician reviewer who is Board Certified in the area of Chiropractics and is currently listed on the TWCC Approved Doctor List.

I am the Secretary and General Counsel of Professional Associates and I certify that the reviewing physician in this case has certified to our organization that there are no known conflicts of interest that exist between him and any of the treating physicians or providers or any of the physicians or providers who reviewed this case for determination prior to referral to the Independent Review Organization.

### **REVIEWER REPORT**

#### **Information Provided for Review:**

Initial evaluation on 04/09/03 by Dr. Merritt.

A follow-up evaluation with Dr. Merritt on 05/29/03.

An MRI of the lumbar spine dated 09/09/03, which was interpreted by Lisa Martinez, M.D.

Another follow-up visit with Dr. Merritt on 09/12/03.

A handwritten note from David Hagstrom (credentials were not provided) dated 10/21/03.

An MRI of the cervical spine dated 11/05/03, which was interpreted by Clint Hamilton, M.D.

An EMG/NCV study of the bilateral upper extremities dated 11/09/03, which was interpreted by Dr. Merritt.

Follow-up visits with Dr. Merritt on 12/17/03, 01/30/04, and 05/14/04.

An evaluation by Johnny Qubty, M.D. dated 01/07/04.

A Designated Doctor Evaluation on 05/17/04 by Rodney J. Simonsen, M.D.

Continued follow-ups with Dr. Merritt on 06/04/04, 06/14/04, and 06/28/04.

A discogram with post discogram CT scan performed on 09/13/04 and interpreted by Dr. Qubty and Bill Moskos, M.D.

Another Designated Doctor Evaluation on 09/20/04 by Dr. Simonsen.

Additional follow-up visits with Dr. Merritt on 09/24/04, 11/18/04, 11/22/04, 12/06/04, 12/17/04, 01/05/05, 01/21/05, 01/31/05, and 02/07/05.

A Functional Capacity Evaluation (FCE) on 03/22/05 by Kathryn J. Rowell, O.T.R., M.O.T.

### **Clinical History Summarized:**

The claimant was working on top of a 10 foot scaffold when it broke. He fell to the ground and the metal and wood frame of the scaffold fell on top of the claimant, striking his neck and back. The diagnoses on 04/09/03 were lumbar intervertebral disc disorder without myelopathy, lumbar and cervical sprain/strains, and posttraumatic headaches, all secondary to the work related injury on \_\_\_\_\_. An MRI of the lumbar spine on 09/09/03 revealed mild bulging of the annuli fibrosis at L2-L3 and L4-L5, as well as a suggestion of a small tear at L4-L5. There was no significant spinal canal stenosis. An MRI of the cervical spine on 11/05/03 revealed a central disc protrusion at C5-C6. An EMG/NCV study of the bilateral upper extremities on 11/09/03 did not demonstrate evidence of cervical radiculopathy or peripheral entrapment syndrome. From 12/17/03 through 05/14/04, the claimant attended therapy with Dr. Merritt for a total of four visits. On 01/07/04, Dr. Qubty recommended an ESI at L4-L5 for sciatica and noted right L4-S1 facet injections and right SI injections might be needed. Relafen, Ultram, and Skelaxin were prescribed. Dr. Simonsen performed a Designated Doctor Evaluation on 05/17/04 and did not feel the claimant had reached Maximum Medical Improvement (MMI). He noted the claimant had been through extensive chiropractic treatment. He recommended McKenzie therapy. On 06/04/04, 06/14/04, and 06/28/04, the claimant received McKenzie protocol from Dr. Merritt. A discogram and post discogram CT scan on 09/13/04 revealed an annular disc rupture at L4-L5 and bulging with intractable back pain. Dr. Simonsen performed another Designated Doctor Evaluation on 09/20/04. He recommended three more months of McKenzie protocol. On 09/24/04, Dr. Merritt noted the claimant was pending an IDET procedure with Dr. Qubty, which he underwent on 11/08/04. On 11/18/04, Dr. Merritt noted the claimant was functioning in the less than sedentary physical demand level and recommended a rehabilitation program. From 11/22/04 through 01/31/05, the claimant received therapeutic exercises, manual therapies, joint mobilization, and neuromuscular reeducation for six visits. On 02/07/05, Dr. Merritt recommended a work conditioning program in conjunction with a home exercise program. On 03/22/05, the claimant performed in the light physical demand level during an FCE.

**Disputed Services:**

Office visits, therapeutic exercises, neuromuscular reeducation, and manual therapy provided by Cotton Merritt, D.C. from 06/04/04 through 02/07/05.

**Decision:**

No, I do not feel that the office visits, therapeutic exercises, neuromuscular reeducation, and manual therapy provided by Cotton Merritt, D.C. from 06/04/04 through 02/07/05 were appropriate.

**Rationale/Basis for Decision:**

Based upon review of the documentation supplied there did not appear to be a treatment plan with regard to managing the care of Mr. \_\_\_\_\_. There were large gaps in treatment (two and a half months in 2003 and one and a half months and then three months in 2004). Section 408.021(31) of the Texas Labor Code only substantiates the need for care that cures or relieves the effects naturally resulting from the compensable injury, promotes recovery, or enhances the ability of the employee to return to or retain employment. There is a lack of documentation to substantiate that the care provided by Dr. Merritt past 06/04/04, including office visits, therapeutic exercises, neuromuscular reeducation, and manual therapy did in fact qualify to the requirements of Section 408.021(31) of the Texas Labor Code.

This review was conducted on the basis of medical and administrative records provided with the assumption that the material is true and correct.

This decision by the reviewing physician consulting for Professional Associates is deemed to be a Commission decision and order.

**YOUR RIGHT TO REQUEST A HEARING**

Either party to this medical dispute may disagree with all or part of this decision and has a right to request a hearing.

A request for a hearing must be in writing and it must be received by the TWCC Chief Clerk of Proceedings/Appeals Clerk **within twenty (20) calendar days** of your receipt of this decision (28 Texas Administrative Code 148.3).

This decision is deemed received by you **five (5) calendar days** after it was mailed and the first working day after the date this decision was placed in the carrier representative's box (28 Texas Administrative Code 102.5 (d)). A request for a hearing should be faxed to 512-804-4011 or sent to:

Chief Clerk of Proceedings/Appeals Clerk  
Texas Workers' Compensation Commission  
P. O. Box 17787  
Austin, TX 78744

A copy of this decision should be attached to the request. The party appealing the decision shall deliver a copy of its written request for a hearing to all other parties involved in the dispute.

I hereby verify that a copy of this Independent Review Organization's decision was sent to TWCC via facsimile or U.S. Postal Service on 07/14/05 from the office of Professional Associates.

Sincerely,

Lisa Christian  
Secretary/General Counsel