

# 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 Pain & Recovery Clinic c/o Bose Consulting, LLC P O BOX 550496 Houston, Texas 77255	MDR Tracking No.: <b>M5-05-2746-01</b>
	TWCC No.:
	Injured Employee's Name:
Respondent's Name and Address Zurich American Insurance Company Box 19	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		
12-13-04	02-9-05	99212, 99204, 99214, 97032, 97035, 97140, E1399, 97124 and 97110	<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.

Based on review of the disputed issues within the request, the Medical Review Division has determined that **medical necessity was not the only issue** to be resolved. This dispute also contained services that were not addressed by the IRO and will be reviewed by the Medical Review Division.

On 07-25-05, the Medical Review Division submitted a Notice to requestor to submit additional documentation necessary to support the charges and to challenge the reasons the respondent had denied reimbursement within 14-days of the requestor's receipt of the Notice.

CPT code 99080-73 dates of service 12-13-04 and 01-14-05 denied with denial code "V" for unnecessary medical treatment based on a peer review. The TWCC-73 is a required report per Rule 129.5 and is not subject to an IRO review. The Medical Review Division has jurisdiction in this matter. Reimbursement is recommended in the amount of **\$30.00 (\$15.00 X 2 DOS)**.

**PART IV: COMMISSION DECISION**

Based upon the review of the disputed healthcare services, the Medical Review Division has determined that the requestor is entitled to reimbursement for the services involved in this dispute in the amount of \$30.00 and is not entitled to a refund of the paid IRO fee. The Division hereby **ORDERS** the insurance carrier to remit this amount and the appropriate amount for the services in dispute consistent with the applicable fee guidelines, plus all accrued interest due at the time of payment, to the Requestor within 20-days of receipt of this Order.

Findings and Decision and Order by:

08-25-05

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date of Decision and Order

**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**

If you are unhappy with all or part of this decision, you have the right to appeal the decision. Those who wish to appeal decisions that were issued during the month of August 2005, should be aware of changes to the appeals process which take effect September 1, 2005.

House Bill 7, recently enacted by the 79th Texas Legislature, provides that an appeal of a medical dispute resolution order that is not pending for a hearing at the State Office of Administrative Hearings (SOAH) on or before August 31, 2005 is not entitled to a SOAH hearing. This means that the usual 20-day window to appeal to SOAH, found in Commission Rule 148.3, will be shortened for some parties during this transition phase. If you wish to seek an appeal of this medical dispute resolution order to SOAH, you are encouraged to have your request for a hearing to the Commission as early as possible to allow sufficient time for the Commission to submit your request to SOAH for docketing. A request for a SOAH 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.

Beginning September 1, 2005, appeals of medical dispute resolution orders are procedurally made directly to a district court in Travis County [see Texas Labor Code, Sec. 413.031(k), as amended and effective Sept. 1, 2005). An appeal to District Court must be filed not later than 30 days after the date on which the decision that is the subject of the appeal is final and appealable.

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



7600 Chevy Chase, Suite 400  
Austin, Texas 78752  
Phone: (512) 371-8100  
Fax: (800) 580-3123

## NOTICE OF INDEPENDENT REVIEW DECISION

**Date:** August 23, 2005

**To The Attention Of:** TWCC  
7551 Metro Center Drive, Suite 100, MS-48  
Austin, TX 78744-16091

**RE: Injured Worker:** \_\_\_\_\_  
**MDR Tracking #:** M5-05-2746-01  
**IRO Certificate #:** IRO 5263

Forté has been certified by the Texas Department of Insurance (TDI) as an independent review organization (IRO). The Texas Workers' Compensation Commission (TWCC) has assigned the above referenced case to Forté for independent review in accordance with TWCC Rule §133.308 which allows for medical dispute resolution by an IRO.

Forté has performed an independent review of the proposed care to determine if the adverse determination was appropriate. In performing this review, 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 was reviewed.

The independent review was performed by a Chiropractic reviewer who has an ADL certification. The reviewer has signed a certification statement stating that no known conflicts of interest exist between him or her and any of the treating physicians or providers or any of the physicians or providers who reviewed the case for a determination prior to the referral to for independent review. In addition, the reviewer has certified that the review was performed without bias for or against any party to this case.

### **Submitted by Requester:**

- Statement letter from Bose Consulting, LLC
- Radiology reports
- FCE reports
- Surgical reports
- Examination reports
- Daily progress notes

### **Submitted by Respondent:**

- Statement letter from the carrier's counsel

### **Clinical History**

According to the supplied documentation, the claimant sustained an injury on \_\_\_ when the claimant tripped over a forklift and landed on his low back. The compensable injury was his

lumbar spine as well as his cervical spine. The claimant began care with Cameron Jackson, D.C. On 2/24/04, the claimant underwent a lumbar spine x-ray which found no gross pathologies. Thoracic spine x-ray revealed postural alterations and moderate to marked disc changes in the mid and lower thoracic spine. An MRI dated 2/26/04 revealed a left paracentral disc protrusion at L5-S1 approximately 4-5 mm in dimension, which displaces the nerve root in the left foramen. On 3/30/04, the claimant underwent an FCE which revealed the claimant was at a light/medium to medium capacity, which was less than his necessary medium/heavy job classification. The claimant was recommended and began a work hardening program. The claimant was seen by S. Ali Mohammed, M.D. on 8/30/04 who reported the claimant's current treatment plan was not benefitting him, although he would like him to continue physical therapy and rehabilitation three times per week. On 10/14/04, the claimant was seen by Frank L. Barnes, M.D. for an examination. Dr. Barnes reported that the claimant was not responding to other treatments and recommended lumbar surgery to relieve the pressure of his nerve roots at L5-S1. Passive therapy continued. The documentation supplied went beyond the dates of service in question and was not reviewed.

### **Requested Service(s)**

Office visits - 99212/99204/99214, electrical stimulation (manual) - 97032, ultrasound - 97035, manual therapy technique - 97140, durable medical equipment (DME) - E1399, massage therapy - 97124 and therapeutic exercises - 97110 for dates of service 12/13/04 to 2/9/05

### **Decision**

I agree with the insurance carrier and disagree with the treating provider that the services rendered between 12/13/04 through 2/9/05 were not medically necessary.

### **Rationale/Basis for Decision**

According to the supplied documentation, the claimant sustained a cervical sprain/strain and a lumbar disc herniation at L5-S1 on \_\_\_ as a result of a work injury. The claimant underwent an abundant amount of passive and active therapies, medications, counseling, work hardening and regular examinations. After approximately 9 months of therapy, Dr. Barnes recommended that the claimant undergo surgery to his lumbar spine to reduce his symptoms. The dates of service in question are approximately two months later and extend for three months. Services provided during these dates were mostly passive in nature and are not reasonable or medically necessary to treat the compensable injury. Treatment provided during these dates had already been performed and had failed. The continued use of passive treatments were not objectively supported and provided little relief to the claimant. All of the documentation supplied as well as the examination by Dr. Barnes dated 10/14/04 revealed that surgical intervention was the only necessary treatment rendered beyond 10/14/04. None of the treatment rendered during the dates of service disputed is supported by current medical protocols.

In accordance with Commission Rule 102.4(h), I hereby verify that a copy of this Independent Review Organization (IRO) Decision was sent to TWCC via facsimile or U.S. Postal Service from the office of the IRO on this 23<sup>rd</sup> day of August 2005.

Signature of IRO Employee:

Printed Name of IRO Employee: Denise Schroeder