Texas Department of Insurance, Division of Workers' Compensation
7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1609

MEDICAL DISPUTE RESOLUTION FINDINGS AND DECISION

Retrospective Medical Necessity and Fee Dispute

PART I: GENERAL INFORMATION

Type of Requestor: (X) Health Care Provider ( ) Injured Employee ( ) Insurance Carrier

Requestor's Name and Address: Houston Pain & Recovery c/o Bose Consulting P O BOX 550496 Houston, Texas 77255	MDR Tracking No.: M5-05-2783-01 Claim No.: Injured Employee's Name:
Respondent's Name and Address: American Home Assurance Box 19	Date of Injury: Employer's Name: Insurance Carrier's No.:

PART II: REQUESTOR'S PRINCIPLE DOCUMENTATION AND POSITION SUMMARY

DOCUMENTATION SUBMITTED: TWCC-60, explanations of benefits, CMS 1500s and medical documentation
POSITION SUMMARY: The treatment is reasonable and necessary as the treatment provided relief of pain to claimant. The treatment is also reasonable and necessary as the treatment was recommended by doctors in the same jurisdiction who actually evaluated the patient. The provider is requesting fair reimbursement of quality medical treatment provided to the claimant.

PART III: RESPONDENT'S PRINCIPLE DOCUMENTATION AND POSITION SUMMARY

DOCUMENTATION SUBMITTED: TWCC-60 response and explanations of benefits
POSITION SUMMARY: None submitted by Respondent

PART IV: SUMMARY OF DISPUTE AND FINDINGS

Date(s) of Service	CPT Code(s) or Description	Medically Necessary?	Additional Amount Due (if any)
06-23-04 to 10-25-04	Office visits, electrical stimulation, manual therapy technique, therapeutic exercises, neuromuscular re-education and miscellaneous DME	☐ Yes ☒ No	$0.00

PART V: 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 Division Rule 133.308 (relating to Medical Dispute Resolution by Independent Review Organization), Medical Dispute Resolution 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 Medical Dispute Resolution.

On 10-25-05, 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.

Date of service 06-21-04 per Rule 133.308(e)(1) was not timely filed and is not eligible for review.

CPT code 99080-73 listed on the table of disputed services for dates of service 07-29-04, 08-09-04 and 09-30-04 per explanations of benefits from the carrier were paid. Payment was verified with the Requestor. These services are therefore no longer in dispute.

CPT code 97546-WH dates of service 09-20-04 (4 units), 09-21-04 (4 units), 09-22-04 (4 units) and 09-24-04 (4 units) denied with denial codes "143/420" (portion of payment deferred/supplemental payment. The carrier has made a payment of $819.20 The requestor billed the MAR of $1,024.00. Reimbursement is 80% of the MAR for non-CARF providers or $819.20. No additional reimbursement is recommended.

CPT code 97545-WH dates of service 09-20-04 (4 units), 09-21-04 (4 units), 09-22-04 (4 units) and 09-24-04 (4 units) denied with denial codes "143/420" (portion of payment deferred/supplemental payment. The carrier has made a payment of $409.60. The requestor billed the MAR of $1,024.00 Reimbursement is 80% of the MAR for non-CARF providers. Additional reimbursement is recommended in the amount of **$409.60.**

PART VI: GENERAL PAYMENT POLICIES/REFERENCES IMPACTING DECISION

28 Texas Administrative Code Sec. 133.308, Rule 133.308(e)(1)

PART VII: DIVISION DECISION AND ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code, Sec. 413.031, the Division has determined that the requestor is entitled to additional reimbursement in the amount of $409.60.

In addition, the Division finds that the requestor was not the prevailing party and is not entitled to a refund of the IRO fee. The Division hereby **ORDERS** the insurance carrier to remit this amount plus all accrued interest due at the time of payment to the Requestor within 30 days of receipt of this Order.

Ordered by:

		10-31-05
Authorized Signature		Date of Order

PART VIII: YOUR RIGHT TO REQUEST JUDICIAL REVIEW

Appeals of medical dispute resolution decisions and 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. The Division is not considered a party to the appeal.

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

IRO America Inc.

An Independent Review Organization
7626 Parkview Circle
Austin, TX 78731
Phone: 512-346-5040
Fax: 512-692-2924

September 21, 2005

TWCC Medical Dispute Resolution
Fax: (512) 804-4868

Patient:	___
TWCC #:	___
MDR Tracking #:	M5-05-2783-01
IRO #:	5251

IRO America Inc. (IRO America) has been certified by the Texas Department of Insurance as an Independent Review Organization. The Texas Worker's Compensation Commission (TWCC) has assigned this case to IRO America for independent review in accordance with TWCC Rule 133.308 which allows for medical dispute resolution by an IRO.

IRO America has performed an independent review of the proposed care to determine if the adverse determination was appropriate. In performing this review, all relevant medical records and documentation utilized to make the adverse determination, along with any documentation and written information submitted, was reviewed.

The independent review was performed by a matched peer with the treating doctor; the Reviewer is a credentialed Panel Member of IRO America's Medical Knowledge Panel who is a licensed Provider, board certified and specialized in Chiropractic care. The reviewer is on the TWCC Approved Doctor List (ADL).

The IRO America Panel Member/Reviewer is a health care professional who has signed a certification statement stating that no known conflicts of interest exist between the Reviewer and any of the treating doctors or providers or any of the doctors or providers who reviewed the case for a determination prior to the referral to IRO America for independent review. In addition, the reviewer has certified that the review was performed without bias for or against any party to the dispute.

RECORDS REVIEWED

Notification of IRO assignment, information provided by Requestor, Respondent, and Treating Doctor(s) including:

1. Dispute Resolution Request.
2. Table of Disputed Services.
3. EOBs, 7-21-04 through 10-25-04.
4. Position Statement from Bose Consulting.
5. Pre-authorization and Peer Reviews from ConsiliumMD, 8-24-04, 11-7-04, 9-22-04, 10-31-04, 11-12-04, and 11-30-04.
6. Peer Review from S. Bigos, M.D., 3-17-04.
7. Medical reports from Pain and Recovery Clinics of Houston, 9-18-03 through 5-31-05.
8. Medical reports from U.S. Anesthetics, 10-8-03 through 2-15-05.
9. Cervical MRI report, 10-10-03.
10. Operative Reports, 11-19-03, 1-14-04, and 2-18-04.
11. Lumbar MRI report, 12-19-03.
12. Electrodiagnostic Evaluation, 1-8-04.
13. Baseline Functional Evaluation, 1-9-04.
14. Medical report from David Vanderweide, M.D., 1-12-04.
15. Daily Progress Notes from Pain and Recovery Clinic of Houston, 2-23-04 through 10-25-04.
16. Medical report from Richard Francis, M.D., 3-25-04.
17. Medical report from Guy Fogel, M.D., 6-17-04.
18. DD Evaluation by Bartolome Ibarra, M.D., 8-16-04.
19. Functional Capacity Evaluation, 8-23-04.
20. Vocational Rehabilitation Group Status Report, 9-3-04 and 2-21-05.

21. Mental Health Evaluation, 1-7-05.
22. Psychiatric Evaluation, 1-19-05.
23. Vocational Reports, 3-31-05 and 4-4-05.
24. Medical report from David Vanderweide, M.D., 1-16-05.

CLINICAL HISTORY

On 9-5-03, the patient reported a work injury occurring on ___ after lifting a bookcase while working for as a laborer. He was initially evaluated by Dr. Esparza at Suburban Physician's Clinic. The patient only reported upper back and neck pain without any mention of low back pain. Dr. Esparza felt the patient could return to work with restrictions.

On 9-18-03, the patient was evaluated by Brett Garner, D.C. The patient reported neck pain, left shoulder pain, and low back pain. Palpation elicited tenderness in the cervical and thoracic paraspinal musculature. Cervical range motion was limited in flexion, extension, and left lateral bending. Sensory evaluation revealed dysesthesias of the second and third digits. Motor testing was 4/5 in the left triceps. Maximum cervical compression, quadrant testing, and cervical distraction tests were positive. Tenderness was noted over the AC joint and bicipital tendon. Shoulder abduction was 90° and flexion was 100°. Speed's was positive. Scaption testing was +4/5 strength on the left. Palpation elicited tenderness in the lumbar spine. Range of motion was limited with flexion, extension, and lateral bending to the right. Reflex, sensory, and motor testing were within normal limits. Sitting and supine SLR produced only axial low back pain. Conservative chiropractic treatment was initiated.

On 10-8-03, the patient was evaluated by Andrew McKay, M.D. The patient reported low back pain rated 9/10 and neck pain rated 5/10. The patient also reported numbness in the upper extremities down into the fingertips. Cervical range motion was restricted mostly to extension. Tenderness was noted throughout the cervical spine. Lumbar range of motion was restricted to extension eliciting low back pain. SLR was negative. Fabere's was negative. Light touch, manual motor testing and reflex testing to the upper extremities bilaterally was within normal limits.

Cervical MRI dated 10-10-03 denoted diffuse disc herniation at C5-C6 as well as C6-C7.

A cervical epidural steroid injection was performed on 11-19-03. Post-injection rehab continued under the auspices of Dr. Garner. According to Dr. McKay, this provided no lasting benefit.

Lumbar MRI dated 12-19-03 demonstrated 2-3 mm disc bulging at T11-T12, 3-4 mm herniation at L3-L4, and 2-3 mm bulging at L4-L5.

Electrodiagnostic testing on 1-8-04 demonstrated findings consistent with a left C6 radiculopathy and a mild L5 radiculopathy.

Functional Capacity Evaluation dated 1-9-04 indicated the patient was capable of working in the Sedentary-Light physical demand level. He had the ability to lift 14 pounds occasionally and carry 14 pounds frequently. However, there were significant findings of "self-limiting behaviors" including positive Waddell tests, inconsistency with bilateral grip strength testing, and cogwheel release during most manual motor testing of the upper and lower extremities.

On 1-12-04, David Vanderweide, M.D. performed a required medical evaluation. It was his opinion that he was "unable to explain either the magnitude or perpetuation of his current complaints" based upon the injury of that at issue. He felt his clinical findings at the time were "inconsistent and invalid."

A lumbar epidural steroid injection was performed on 1-14-04. Post-injection physical therapy continued under the auspices of Dr. Garner. At this point, the patient had received approximately 4 months of chiropractic/physical therapy treatment. On 2-18-04, a left transforaminal epidural steroid injection was performed. Yet again, post-injection therapy continued.

On 3-24-04, the patient was evaluated by Richard Francis, M.D. The patient reported neck pain, shoulder pain, low back pain, bilateral arm pain, and bilateral leg pain. Waddell signs were positive. Dr. Francis indicated the patient "essentially has pain in his whole body." Extremity symptoms were "glove and stocking" distribution.

On 5-13-04, the patient was re-evaluated at the Pain and Recovery Clinic. Cervical pain was rated 9/10 and low back pain was rated 6/10. Tenderness was noted throughout the cervical and lumbar spine region. Cervical flexion was 40°, extension 15°, right lateral flexion 35°, and left lateral flexion 45°. Cervical compression and cervical distraction tests were positive. Weakness was noted with left lateral flexion of the cervical spine. Lower extremity neurologic assessment was normal. Lumbar flexion was 80°, extension 15°, and lateral flexion 20° bilaterally. All movements produced pain. SLR was negative. Fabere's was negative.

Through 6-2-04, physical examinations by Andrew McKay and Dr. Francis demonstrated normal reflex testing, normal

sensory testing, and 5/5 strength in the upper and lower extremities. On 6-17-04, Guy Fogel, M.D. recommended ACDF of C5-6 and C6-7.

A re-evaluation was performed at the Pain and Recovery Clinic on 6-28-04. The patient reported neck pain, upper back pain, and left upper extremity pain. Cervical range of motion was reduced with extension and left lateral bending. DTR and sensory testing was within normal limits. 4+/5 strength was noted in the left tricep. Maximum cervical compression, quadrant testing and Soto-Hall tests produced upper extremity symptoms. Lumbar range of motion was unrestricted and neurologic assessment was unremarkable.

A functional capacity evaluation was performed on 8-23-04. Overall, he was placed in the sedentary physical demand level.

The patient was re-evaluated by Dr. McKay on 10-25-04. The patient reported neck pain rated 8/10. Symptoms radiated into his left upper extremity. He also noted upper extremity "cramping and twitching." Low back pain continued. Tenderness was noted in the cervical paraspinal musculature from C2 through C6. Cervical range of motion was painful and moderately restricted in extension, left rotation, right rotation, right lateral flexion, and left lateral flexion. Weakness was noted in the left upper extremity. Dr. McKay specifically noted the patient "failed conservative treatment."

On 1-4-05, the patient was re-evaluated by Dr. Garner. Low back pain was rated 6/10 and neck pain was rated 8/10. Pain was provoked with walking, standing, sleeping, reaching, pushing, and pulling. Postural assessment revealed a right head tilt. Cervical root tension signs were present. Tenderness was noted in the cervical, thoracic, and lumbar paraspinal region. Range of motion was restricted eliciting pain. Kemp's elicited pain in the low back and bilateral buttocks, Goldthwait's produced low back pain bilaterally and buttock pain bilaterally. Cervical compression was positive bilaterally producing pain in the cervical and shoulder regions.

On 1-7-05, the patient was re-evaluated by Dr. McKay. The patient reported neck pain rated 8/10 radiating into both arms and fingertips. The patient also reported low back pain radiating into his posterior thighs bilaterally rated 6/10.

A Mental Health Evaluation was performed on 1-7-05. The patient reported constant, strong, tingling, and numbness rated 9/10. The patient reported neck pain, bilateral shoulder pain, bilateral arm pain, upper back pain, middle back pain, low back pain, and bilateral leg pain. The patient reported a numerical pain scale of 8-9/10. The patient indicated his symptoms were severely affecting his activity, mood, walking ability, work, sleep, and enjoyment of life.

On 1-19-05, a Psychiatric Evaluation was performed. The report specifically indicated the patient attempted physical therapy, various injections, medications, return to work programs, and none of these treatments led to any significant improvement in his condition. The patient reported constant neck and low back pain characterized as "sharp."

On 2-18-05, a re-evaluation was performed by Dr. McKay. Yet again, the patient reported neck pain rated 8-9/10 radiating into the shoulders and upper extremities, left greater than right. The patient admitted numbness and tingling in the "same distribution."

Re-evaluation with Dr. Garner dated 3-24-05 mentions continued neck and low back pain rated 9/10. The patient was unable to perform his floor exercises due to pain. Cervical evaluation findings were unchanged when compared to the findings in early, middle and late 2004. On 5-31-05, the patient's numerical pain scale was 9/10.

On 6-16-05, the patient specifically indicated to Dr. Vanderweide, M.D. that the chiropractic treatment provided no relief. Dr. Vanderweide indicated there was "no significant change in the patient's condition since his last evaluation." The symptoms, functional abilities, and physical examination findings remained "inconsistent and invalid."

DISPUTED SERVICE(S)

Under dispute retrospective medical necessity of Office visits, electrical stimulation, manual therapy techniques, therapeutic exercise, neuromuscular reeducation and miscellaneous DME, 6-23-04 through 10-25-04

DETERMINATION/DECISION

The Reviewer agrees with the determination of the insurance carrier.

RATIONALE/BASIS FOR THE DECISION

In the Reviewer's medical opinion, the chiropractic services provided between 6-23-04 and 10-25-04 were not reasonable or necessary.

The records provided fail to demonstrate relevant and lasting "inter-tester" documentation of subjective improvement as a

result of the treatment performed between 6-23-04 and 10-25-04. The reconsideration letter from the Pain and Recovery Clinic indicated their treatment was reasonable and necessary due to the fact "on 1-12-04 the claimant reported a 9/10 pain scale and on 7-29-04 the claimant reported a 4/10 pain scale." This statement is completely misleading and does not reveal the facts of the case. The treatment performed through 10-25-04 did not relieve the effects of injury at all. According to the documentation from Dr. McKay dated 10-25-04, the patient reported neck pain rated 8/10, radiating left upper extremity symptoms, "cramping and twitching" in the upper extremity, and continued low back pain. On 1-4-05, Dr. Garner specifically documented low back pain rated 6/10 and neck pain rated 8/10. On 1-7-05, Dr. McKay reported ongoing neck pain and bilateral upper extremity symptoms rated 8/10. A Mental Health Evaluation dated 1-7-05 the patient reported constant, strong, tingling, and numbness in the neck and upper extremity rated 9/10. A psychiatric evaluation dated 1-19-05 specifically indicated the patient reported the previous treatment "did not lead to any significant improvement in his condition." On 3-24-05, Dr. Garner documented a 9/10 pain scale. Lastly, on 6-16-05, Dr. Vanderweide specifically indicated the patient received "no significant change in his condition since his last evaluation." After reviewing all the documentation submitted from multiple health-care providers, it became quite obvious the treatment did not relieve the effects of the injury. Again, the statement by the Pain and Recovery Clinic regarding relief of symptoms is completely misleading and false.

The reconsideration letter from the Pain and Recovery Clinic quotes the "Travelers v. Martin" case that indicated relief of pain suffices for medically reasonable and necessary treatment. This statement by the Pain and Recovery Clinic has been misrepresented. The documentation clearly fails to demonstrate any lasting "relief of pain" as a result of the > one year of chiropractic treatment.

The records provided failed to substantiate any functional improvement as a result of the treatment provided. The documentation did not include outcome assessment tools to quantify levels of functional improvement. Outcome assessment tools have been shown to be valid and reliable means of measuring functional status. In fact, it appears the patient's functional status actually deteriorated despite the treatment. On 1-9-04, a functional capacity evaluation indicated the patient was functioning in the sedentary-light physical demand level. A repeat functional capacity evaluation on 8-23-04 placed the patient in a sedentary physical demand level. This clearly demonstrates a lack of functional improvement despite the chiropractic treatment through 10-25-04.

Third, the documentation fails to demonstrate adequate objective improvement as a result of the treatment provided in such relevant clinical findings such as range of motion, strength/endurance, and/or orthopedic testing. The 4+/5 strength in the left tricep documented by Dr. Garner was not supported by the evaluation findings of the other health-care providers managing the case. In fact, Dr. Esparza, Dr. Kay and Dr. Vanderweide specifically documented 5/5 strength in the upper and lower extremities. Additionally, the electrodiagnostic testing performed failed to demonstrate any evidence of a C7 radiculopathy concordant with tricep weakness. In other words, there is no inter-tester documentation to support the reported +4/5 strength testing reported by Dr. Garner.

Fourth, over-treatment and over-utilization commonly contribute to chronic pain, dependency, and a disability mindset. The ACOEM guidelines indicate over-treatment with passive modalities and even excessive in office therapeutic exercise can actually delay functional recovery. Prior 6-21-04, the patient had already received more than nine months of in-office chiropractic/physical therapy treatment to include a great deal of passive procedures and a great deal of one-on-one based therapeutic exercise. Once an exercise program is establish, the patient should be independent with that program and the need for additional in-office treatment can no longer be recommended. After a successful course of supervised treatment, a home exercise program can be performed on a daily basis, can be extremely motivational, and is certainly more cost-effective than the treatment provided.

Fifth, the treatment between 6-21-04 and 10-25-04 included multiple passive modalities including electrical stimulation, manual therapy techniques, and massage. The Philadelphia Panel of Physical Therapy found insufficient evidence to support such passive procedures in the treatment of chronic neck and/or back pain. In fact, there is good evidence demonstrating insignificant improvement on relevant clinical outcomes such as pain, functional status, and/or return to work. These passive modalities foster chronicity and dependency without providing meaningful long-term benefit. Again, the passive procedures performed after 6-21-04 was administered despite nine months of previous treatment. Protracted and unsuccessful attempts to control pain should result in a change in the treatment strategy and/or discontinuation of the treatment.

Sixth, the documentation is insufficient to support one-on-one based therapeutic exercise. The chiropractor billed 3-5 units of one-on-one based therapeutic exercise; however, it is not clear to the Reviewer what was performed. Placing check-marks in front of the words stretching, strengthening, synergy, stabilization, and neuromuscular re-education, falls far below community standards and certainly does not support the billing of one-on-one guidance. In order to support one-on-one guidance, the

documentation must clearly indicate the program was progressed to require additional supervision and instruction. Additionally, the

documentation must clearly demonstrate the exercise program resulted in lasting objective functional improvement. Simply performing the same exercise program over and over again does not justify one-on-one supervision.

Seventh, the evaluation and management codes billed between 6-21-04 and 10-25-04 cannot be supported. The patient should have been discharged independent with a home exercise program and the need for additional in-office chiropractic treatment was not reasonable or necessary.

Eighth, there is no medical literature to indicate "post-procedure" chiropractic/physical therapy provides any more benefit than an independent home program. This patient had been given a home exercise program and it appears the program did not change after the injections were performed to support one-on-one based therapy. Additionally, ongoing passive modalities including electrical stimulation, massage therapy, and manual procedures following an interventional procedure has not been shown to provide any lasting therapeutic benefit.

Screening Criteria

General:

In making his determination, the Reviewer had reviewed medically acceptable screening criteria relevant to the case, which may include but is not limited to any of the following: Evidence Based Medicine Guidelines (Helsinki, Finland); Texas Medical Foundation: Screening Criteria Manual (Austin, Texas); Texas Chiropractic Association: Texas Guidelines to Quality Assurance (Austin Texas); Texas Medical Foundation: Screening Criteria Manual (Austin, Texas); Mercy Center Guidelines of Quality Assurance; any and all guidelines issued by TWCC or other State of Texas Agencies; standards contained in Medicare Coverage Database; ACOEM Guidelines; peer-reviewed literate and scientific studies that meet nationally recognized standards; standard references compendia; and findings; studies conducted under the auspices of federal government agencies and research institutes; the findings of any national board recognized by the National Institutes of Health; peer reviewed abstracts submitted for presentation at major medical associates meetings; any other recognized authorities and systems of evaluation that are relevant.

CERTIFICATION BY OFFICER

IRO America has performed an independent review solely to determine the medical necessity of the health services that are the subject of the review. IRO America has made no determinations regarding benefits available under the injured employee's policy.

As an officer of IRO America Inc., I certify that there is no known conflict between the Reviewer, IRO America and/or any officer/employee of the IRO with any person or entity that is a party to the dispute.

IRO America is forwarding by mail or facsimile, a copy of this finding to the TWCC, the Injured Employee, the Respondent, the Requestor, and the Treating Doctor.

Sincerely,
IRO America Inc.

Dr. Roger Glenn Brown
President & Chief Resolutions Officer