



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

<b>Type of Requestor:</b> (X) Health Care Provider ( ) Injured Employee ( ) Insurance Carrier	
Requestor's Name and Address:	MDR Tracking No.: M5-05-3081-01
All-Star Chiropractic and Rehab 8208 Bedford-Eules Rd N. Richland Hills, TX 76180	Claim No.:
	Injured Employee's Name:
Respondent's Name and Address:	Date of Injury:
American Home Assurance Company, Box 19	Employer's Name:
	Insurance Carrier's No.:

#### PART II: REQUESTOR'S PRINCIPLE DOCUMENTATION AND POSITION SUMMARY

Documents include the DWC 60 package. Position summary states, "We are still short of the 24 visits as recommended. This claimant's care was rendered in good faith and all 22 visits to date should be paid as they were rendered in compliance with standards of care adhered to in Texas for injury to intercostal region, which are slow to heal, and that he actually required some invasive procedures in the form of medication injections to get him over the hump."

#### PART III: RESPONDENT'S PRINCIPLE DOCUMENTATION AND POSITION SUMMARY

Documents include the DWC 60 response. Position summary states, "The carrier disputes that the provider has shown that the treatment underlying the charges was medically reasonable and necessary."

#### PART IV: SUMMARY OF DISPUTE AND FINDINGS - Medical Necessity Services

Date(s) of Service	CPT Code(s) or Description	Medically Necessary?	Additional Amount Due (if any)
11-18-04 – 1-10-05	CPT codes 98940, 97032, 97124-59, 99080, 99070, 97035, 97012, 97140-59	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	0

#### 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 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 9-21-05 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 on 11-29-04, 12-6-04 and 12-20-04 was denied by the carrier as "U-unnecessary medical". The DWC-73 is a required report per Rule 129.5. The requestor submitted these reports for review. The Medical Review Division has jurisdiction in this matter. Recommend reimbursement of \$45.00 (\$15.00 X DOS).

**PART VI: GENERAL PAYMENT POLICIES/REFERENCES IMPACTING DECISION**

28 Texas Administrative Code Sec. 129.5, 133.308 and 134.202(c)(1).

**PART VII: DIVISION DECISION**

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 not entitled to a refund of the paid IRO fee. The Division has determined that the requestor is entitled to reimbursement for the services involved in this dispute in the amount of \$45.00. 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.

Findings and Decision and Order by:

Donna Auby

1-17-06

Authorized Signature

Typed Name

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.**



# PROFESSIONAL ASSOCIATES

## NOTICE OF INDEPENDENT REVIEW

**NAME OF PATIENT:**  
**IRO CASE NUMBER:** M5-05-3081-01  
**NAME OF REQUESTOR:** All Star Chiropractic and Rehabilitation  
**NAME OF PROVIDER:** Jon W. Schweitzer, D.C.  
**REVIEWED BY:** Licensed by the Texas State Board of Chiropractic Examiners  
**IRO CERTIFICATION NO:** IRO 5288  
**DATE OF REPORT:** 11/02/05

Dear All Star Chiropractic and Rehabilitation:

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 TDI-Division of Workers' Compensation (DWC) to randomly assign cases to IROs, DWC 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. determination, and any documentation and written information submitted in support of the appeal.

This case was reviewed by a physician reviewer who is Licensed in the area of Chiropractics and is currently listed on the DWC 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 the provider, the injured employee, the injured patient's employer, the injured employee's insurance carrier, the utilization review agent, or any of the treating doctors or insurance carrier health care providers who reviewed the case for decision before referral to the Independent Review Organization .

### REVIEWER REPORT

#### Information Provided for Review:

X-rays of the right ribs and chest dated 08/26/04 and interpreted by Bruce Cheatham, M.D.  
TWCC-73 form signed by Mark Morris, D.O. on 09/07/04, 09/14/04, 09/21/04, 10/04/04, and 10/18/04  
Additional x-rays of the right ribs dated 10/28/04 and interpreted by Dr. Cheatham  
TWCC-73 forms signed by Jose Trevino, M.D. on 10/28/04 and 11/05/04  
An initial consultation at All Star Chiropractic and Rehabilitation signed by Jon Schweitzer, D.C.  
TWCC-73 forms signed by Dr. Schweitzer on 11/09/04, 11/15/04, 11/29/04, 12/06/04, 12/20/04, 01/20/05, 02/03/05, and 03/17/05  
A notice of disputed issues and refusal to pay benefits dated 11/11/04  
Treatment notes from Dr. Schweitzer dated 11/15/04, 11/16/04, 11/18/04, 11/22/04, 11/23/04, 11/29/04, 12/01/04, 12/06/04, 12/13/04, 12/22/04, 12/27/04, 01/05/05, 01/10/05, 01/17/05, and 01/31/05.

A TWCC-53 form, the employee's request to change treating doctors, dated 11/17/04  
A provisional report of the MRI of the chest and ribs dated 11/22/04 and signed by John Fisk, M.D.  
An evaluation with Dr. Fisk dated 11/23/04  
An evaluation with Karen Perl, D.O. with the Texas Nonsurgical Orthopedic and Spine Center, P.A. dated 01/17/05  
A follow-up visit with Dr. Perl dated 01/31/05  
Another follow-up evaluation with Dr. Perl dated 02/14/05  
Continued chiropractic treatment with Dr. Schweitzer dated 02/14/05, 02/24/05, 03/03/05, and 03/17/05.  
A letter "To Whom It May Concern" dated 02/21/05 from Dr. Schweitzer  
Follow-up evaluation from Dr. Perl dated 03/03/05 and 03/17/05  
A report of consultative examination and impairment rating dated 04/07/05 from Dr. Schweitzer  
A TWCC-59 form dated 04/07/05 and signed by Dr. Schweitzer  
An impairment rating dated 05/20/05 from Anil T. Bangale, M.D.  
A TWCC-69 form signed by Dr. Bangale on 05/20/05

A notification of Maximum Medical Improvement/first impairment benefit payment dated 06/06/05  
A summary of the carrier's position dated 08/15/05 from S. Rhett Robinson at Flahive, Ogden, and Latson

### **Clinical History Summarized:**

X-rays of the right ribs on 08/26/04 revealed no significant abnormality and x-rays of the chest revealed a 5 mm. peripheral right middle lobe benign calcified granuloma. Dr. Schweitzer initially evaluated the patient on 11/09/04 and diagnosed him with intercostal neuralgia. The patient attended chiropractic therapy with Dr. Schweitzer from 11/15/04 through 03/03/05. The patient received ultrasound, electrical stimulation, massage, myofascial release, and joint mobilization. On 01/17/05, Dr. Perl prescribed the patient a Medrol Dosepak, Flexeril, and Lidoderm Patches. It was noted if the patient was not significantly improved at his next visit, he would receive a trigger point injection. Dr. Perl performed trigger point injections in the right lateral midaxillary line across T8 through T10 overlying the rib areas on 01/31/05. Dr. Schweitzer addressed a letter "To Whom It May Concern" on 02/21/05, which served as a letter for reconsideration for the patient's office visits. On 04/07/05, Dr. Schweitzer performed an impairment rating and placed the patient at statutory Maximum Medical Improvement (MMI) on 04/07/05 and assigned him a 5% whole person impairment rating. Dr. Bangale performed an impairment rating on 05/20/05 and felt the patient had reached MMI on 04/07/05 and assigned him 0% whole person impairment rating. On 08/15/05, Mr. Robinson provided a summary of the carrier's position. The carrier disputed the provider had shown the treatment underlying the charges were medically reasonable and necessary. Furthermore, the documentation did not establish medical necessity of the charges.

### **Disputed Services:**

Chiropractic manipulation, electrical stimulation, massage, records, supplies, ultrasound, manual traction, and manual therapy technique from 11/18/04 through 01/10/05

### **Decision:**

I disagree with the requestor. The chiropractic manipulation, electrical stimulation, massage, records, supplies, ultrasound, manual traction, and manual therapy technique from 11/18/04 through 01/10/05 were neither reasonable nor necessary.

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

Based upon review of the records, it was my opinion the documentation did not support that the treatment to include chiropractic manipulation, electrical stimulation, massage, records, supplies, ultrasound, mechanical traction, and manual therapy technique from 11/18/04 through 01/10/05 was reasonable and medically necessary as related to the injury of \_\_\_\_.

The daily progress notes submitted for review were not maintained in a commonly accepted medical chiropractic format and did not set forth the subjective complaints, objective findings, assessment, or plan or prognosis in a descriptive or narrative format. The form of record keeping utilized did not conform to the generally accepted standards of care for documentation of daily patient encounters and did not support the medical necessity of the services provided, the frequency of care, or the length of care recommended.

In regard to the physical medicine modalities and procedures utilized, there was no documentation indicating the area being treated, the length of time of treatment, the settings or frequency utilized in the treatment, who actually performed the treatment, and what was the patient's response to the treatment. This also holds true for the services of chiropractic manipulation, manual therapy, and the services

for the records and supplies.

Furthermore, the records clearly indicated that the patient had already undergone several weeks of passive physical medicine modalities and in accordance with the *ACOEM Guidelines*, a short period of care with this type of intervention would be reasonable. Specifically, in Chapter 3, initial approaches to treatment on Page 48 it was specifically noted that during the acute to subacute phases for a period of two weeks or less, physicians can use passive modalities such as application of heat and cold for temporary amelioration of symptoms and to facilitate mobilization and exercise. In addition, although the condition of intercostal neuralgia was not specifically addressed in the *ACOEM Guidelines*, sprain/strain injuries are addressed in both Chapter 8 (in regard to the neck and upper back complaints) and Chapter 12 (in regard to low back complaints). On Page 173, it was specifically stated that there was no high grade scientific evidence to support the effectiveness or ineffectiveness of passive physical modalities such as traction, heat/cold applications, massage, diathermy, cutaneous laser treatment, ultrasound, transcutaneous electrical neural stimulation (TENS) unit, and biofeedback.

Finally, although manipulation during the acute phase of injury may enhance the patient's mobilization, the documentation provided for review did not specifically indicate the type of mobilization being performed, the areas that were being treated, and the results of the specific chiropractic treatment being utilized. Consequently, once again, the documentation did not support the medical necessity of this intervention.

The rationale for the opinions stated in this report are based on clinical experience and standards of care in the area as well as broadly accepted literature which includes numerous textbooks, professional journals, nationally recognized treatment guidelines and peer consensus.

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**

If you are unhappy with all or part of this decision, you have the right to appeal the decision. The decision of the Independent Review Organization is binding during the appeal process.

If you are disputing the decision (other than a spinal surgery prospective decision), the appeal must be made directly to a district court in Travis County (see Texas Labor Code §413.031). 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.

If you are disputing a spinal surgery prospective decision, a request for a hearing must be in writing and it must be received by the Division of Workers' Compensation, Chief Clerk of Proceedings, within ten (10) days of your receipt of this decision. A request for a hearing should be faxed to 512-804-4011 or sent to:

Chief Clerk of Proceedings/Appeals Clerk  
TDI-Division of Workers' Compensation  
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 DWC via facsimile or U.S. Postal Service on 11/02/05 from the office of Professional Associates.

Sincerely,

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Lisa Christian  
Secretary/General Counsel