



**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**

**PART I: GENERAL INFORMATION**

<b>Type of Requestor:</b> <input checked="" type="checkbox"/> Health Care Provider <input type="checkbox"/> Injured Employee <input type="checkbox"/> Insurance Carrier	
Requestor's Name and Address:  _____	MDR Tracking No.:                      M5-05-3154-01
	Claim No.:
	Injured Worker's Name:
Respondent's Name and Address:  <b>FACILITY INSURANCE CORP C/O FOL BOX 19</b>	Date of Injury:
	Employer's Name:
	Insurance Carrier's No.:

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

Documentation submitted: TWCC-60 package, EOBs, CMS-1500s  
 Position summary: Patient has a history of lumbar disk disease. These patients develop focal dystonia in the spine. The muscles around the operative scar tighten up and stay tight. This produces and aggravates the chronic pain and sometimes is not relieved by narcotic analgesics. One of the newer treatments used is botulinum toxin injectable into the dystonic muscle. This produces relaxation and then decreases pain and patients can cut down the number of pain pills they use. Botox is necessary to help patient live a normal life.

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

Documentation submitted: TWCC-60 response.  
 Position summary: Provider requested preauthorization for the botox injection that was denied. Provider provided the service. Carrier denied that provider is entitled to reimbursement because the healthcare services are not medically reasonable or necessary.

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

Date(s) of Service	CPT Code(s) or Description	Medically Necessary?	Additional Amount Due (if any)
2-8-05	64614-RT, 64616-LT, and J0587	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	\$0.00
		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
		<input type="checkbox"/> Yes <input type="checkbox"/> No	
		<input type="checkbox"/> Yes <input type="checkbox"/> No	

**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.

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

28 Texas Administrative Code Sec. 133.308, 134.202, 134.600

**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 reimbursement for the services involved in this dispute and is not entitled to a refund of the paid IRO fee.

Findings and Decision by:

Dee Z. Torres, Medical Dispute Officer

10-4-05

Authorized Signature

Typed Name

Date

**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:** M5-05-3154-01  
**NAME OF REQUESTOR:** \_\_\_\_\_  
**NAME OF PROVIDER:** Danny Bartel, M.D.  
**REVIEWED BY:** Board Certified in Orthopedic Surgery  
**IRO CERTIFICATION NO:** IRO 5288  
**DATE OF REPORT:** 09/29/05

Dear Mr. \_\_\_\_:

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 Board Certified in the area of Orthopedic Surgery 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 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:**

An evaluation by an unknown provider (no name or signature was available) dated 03/22/91  
MRIs of the lumbar spine interpreted by Robert Coleman, D.O. dated 04/04/91 and 10/21/91  
Evaluations with Cheryl L. Howard, D.O. on 04/04/91, 08/01/91, 08/13/91, 08/16/91, 08/22/91, 08/27/91, 08/29/91, 09/03/91, 09/05/91, 09/10/91, and 09/19/91  
Examinations by Richard A. Friedman, D.O. dated 04/08/91, 04/15/91, 04/22/91, 05/01/91, 05/13/91, 07/24/91, 07/29/91, 08/21/91, 09/11/91, 09/25/91, 10/02/91, 10/16/91, 10/23/91, 11/25/91, 01/22/92, 01/29/92, 02/17/92, 02/24/92, 03/11/92, and 04/01/92  
A total body bone scan interpreted by Dr. Coleman dated 04/10/91  
A lumbar myelogram CT scan interpreted by Dr. Coleman dated 05/07/91  
An operative report from Marcus Newton, D.O. dated 05/31/91  
A discharge summary from Dr. Newton dated 06/05/91  
A Functional Capacity Evaluation (FCE) with Dr. Howard on 07/22/91  
X-rays of the pelvis and coccyx and a nuclear bone scan interpreted by Charles H. Wheeler, D.O. on 07/30/91  
An operative report from J. Michael Stanton, D.O. dated 09/18/91  
MRIs of the thoracic spine and left knee interpreted by W. M. Matthew, D.O. dated 01/22/92  
An operative report from James Laughlin, D.O. dated 02/19/92  
A pathology report from Chan Lertdilok, M.D. dated 02/19/92  
Evaluations with Leon M. Grigoryev, M.D. dated 10/04/94 and 11/17/94  
An EMG/NCV study interpreted by an unknown provider (no name or signature was available) dated 10/05/04  
A letter of referral from Dr. Grigoryev dated 10/13/94  
Evaluations with Cecil J. Hash, M.D. dated 10/25/94, 02/24/95, 03/08/95, and 05/26/95

A lumbar and cervical myelogram CT scan interpreted by John R. De Biase, M.D. dated 11/08/94

X-rays of the chest, thoracic spine, cervical spine, and lumbar spine interpreted by an unknown provider (no name or signature was available date 11/08/94

An operative report from Dr. Hash dated 02/23/95

A letter from Mary Trevino, Claim Technician at the insurance carrier dated 04/04/95

An MRI of the lumbar spine interpreted by Richard A. Redd, M.D. dated 05/31/96

A lumbosacral myelogram CT scan interpreted by Richard N. Sutton, M.D. dated 07/23/96

EMG/NCV studies interpreted by D. R. Bartel, M.D. dated 09/12/96 and 06/26/97

A lumbar myelogram CT scan interpreted by Dr. Redd dated 05/22/97

Evaluations by Lawrence Russell, P.A.-C. for Dr. Bartel dated 02/04/00, 05/10/00, 08/08/00, 01/17/01, 07/11/01, 11/18/02, 03/10/03, 10/27/03, 01/28/04, 09/02/04, and 12/02/04

Evaluations with Stephen H. Hochschuler, M.D. dated 06/08/00, 05/10/01, 06/26/01, 08/14/01, 09/25/01, and 11/13/01

An evaluation with Q. T. Kramer, M.D. dated 08/04/00

Evaluations by Dr. Bartel on 04/16/01, 09/20/02, 10/04/02, 10/18/02, 11/04/02, 01/20/03, 03/12/03, 05/28/03, 09/22/03, 02/24/04, 10/26/04, 01/04/05, and 05/05/05

An evaluation by Kim Hansen, R.N.C., M.S.N., F.N.P. for Dr. Bartel on 08/20/01, 11/20/01, and 01/17/02

Evaluations by Kimberly Havins, R.N., G-F.N.P. for Dr. Bartel on 03/29/02, 08/20/02, 04/21/03, and 07/06/05

A CT scan of the lumbar spine interpreted by an unknown provider (no name or signature noted) on 06/06/03

Evaluations with Jeffrey D. Reuben, M.D. dated 07/25/04 and 11/06/04

An acknowledgement of reconsideration request from Joel D. Wilk, M.D. at Forte on 02/02/05

A notice of utilization review findings from Forte dated 02/03/05

A physician bill review findings from Forte dated 02/04/05

A letter from Dr. Wilk at Forte on 08/12/05

A letter from Scott D. Bouton at Flahive, Ogden & Latson Attorneys at Law on 08/23/05

### **Clinical History Summarized:**

An unknown provider (no name or signature was available) evaluated the claimant on 03/22/91 and performed x-rays of the left knee, which showed a nonunion of the tibial tuberosity and some arthritic changes. An old compression fracture at L1 was also noted on lumbar x-rays. A knee support and medications were given. An MRI of the lumbar spine interpreted by Robert Coleman, D.O. on 04/04/91 revealed essentially mild to moderate degenerative disc disease throughout the spine. A lumbar myelogram CT scan on 05/07/91 was interpreted by Dr. Coleman and revealed a disc protrusion at L4-L5 with an anterior lateral extradural defect on the right. Marcus Newton, D.O. performed a lumbar laminectomy and discectomy at L4-L5 with medial facetectomies and foraminotomies bilaterally on 05/31/91. Osteopathic manipulations were performed with Dr. Howard from 08/01/91 through 09/19/91. An MRI of the lumbar spine

interpreted by Dr. Coleman on 10/21/91 revealed mild degenerative disc disease in the spine and possible postoperative fibrosis versus recurrent disc herniation at L4-L5. An EMG/NCV study interpreted by Dr. Friedman on 10/23/91 revealed possible left S1 radiculopathy. MRIs of the thoracic spine and left knee on 01/22/92 interpreted by W.M. Matthew, D.O. revealed internal derangement of the posterior horns of the lateral or medial meniscus and a small anterior horn of the medial meniscus. Left knee arthroscopy, chondroplasty, and a major synovectomy were performed by James Laughlin, D.O. on 02/19/92. Repeat lumbar spine surgery was performed by Cecil Hash, M.D. on 02/23/95. On 04/04/95, Mary Trevino, Claim Technician at the insurance carrier stated that preauthorization for the surgery had been granted. On 05/26/95, Dr. Hash felt the claimant should have an 11% whole person impairment rating. On 06/26/01, Stephen Hochschuler, M.D. noted the claimant was three weeks postoperative of a decompression and fusion at L4 to the sacrum. Dr. Bartel performed lumbar tendon sheath injections on 10/04/02 and an ESI on 10/18/02. On 11/04/02, Dr. Bartel recommended Botox with the injections. Dr. Bartel performed another ESI on 03/12/03. A CT scan of the lumbar spine interpreted by an unknown physician (no name or signature was noted) on 06/06/03 revealed extensive lumbar spondylosis in the lumbar spine that was most noted at L2-L3 with extensive disc space narrowing and a vacuum disc phenomenon. On 09/22/03, Dr. Bartel stated the claimant was treated with Botox injections on 03/12/03 and he felt it was reasonable and necessary. He again recommended a dispute resolution. Mr. Russell continued to recommend Botox injections on 10/27/03, 01/28/04, and 09/02/04. On 02/24/04 and 10/26/04, Dr. Bartel again recommended Botox injections. On 01/04/05, Dr. Bartel wrote a letter to the Texas Workers' Compensation Commission (TWCC) stating that the injections had been approved on 09/21/04, but once they were done, he had received a letter of non-authorization from Forte on 11/30/04. Again, Dr. Bartel wanted to have a dispute resolution regarding the Botox injections. Joe D. Wilk, M.D. at Forte wrote a letter of acknowledgement for reconsideration request on 02/02/05 noting that an appeal letter had been received on 02/01/05. On 02/03/05, Forte issued a notice of utilization review findings noting recommending non-authorization for one session of Botox injections. On 05/05/05, Dr. Bartel stated that no pre-certification for the Botox injections was needed and he continued to request a dispute resolution. Ms. Havins recommended repeat Botox injections on 07/06/05. Mr. Wilk wrote a letter to Marcia Rooth at International Solutions on 08/12/05 stating Dr. Bartel should not be reimbursed for the Botox injections on 10/26/04. Scott D. Bouton, from Flahive, Ogden & Latson Attorneys at Law, wrote a letter on 08/23/05 in response to the request for medical dispute resolution by the claimant. Dismissal of the dispute was recommended at that time.

### **Disputed Services:**

Chemodenervation of muscles and Botulinum toxin type B on 02/08/05.

### **Decision:**

I disagree with the requestor. The chemodenervation of muscles and Botulinum toxin type B on 02/08/05 were neither reasonable nor necessary.

**Rationale/Basis for Decision:**

This claimant had a post laminectomy syndrome. The claimant has been treated by Dr. Bartell with Botox injections into the paraspinal muscles. Chemodenervation of the muscles and the use of Botulinum toxin Type B on 02/05/05 was neither reasonable nor necessary in regard to the treatment of the post laminectomy syndrome. There were several excellent studies within the scientific literature. A randomized double blinded study by *Fanciullo et al in Spine*, August 1998, showed no supportive data to justify the routine of this extremely expensive agent in the treatment of chronic lower back pain or cervical thoracic pain. *Foster et al in the Journal of Neurology, 2001*, also did not show long-term relief. It was a very small study without statistical significance. There were no other acceptable studies that address its use in the treatment of chronic lower back pain and absolutely none that address its use in the post laminectomy syndrome. There was no documentation that more effective and reasonable treatments were performed before the use of the botulism toxin.

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 09/29/05 from the office of Professional Associates.

Sincerely,

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Lisa Christian  
Secretary/General Counsel