



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: Pain & Recovery Clinic c/o Bose Consulting, LLC P O BOX 550496 Houston, Texas 77255	MDR Tracking No.: M5-05-3245-01
	Claim No.:
	Injured Employee's Name:
Respondent's Name and Address: Texas Mutual Insurance Company Box 54	Date of Injury:
	Employer's Name:
	Insurance Carrier's No.:

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

DOCUMENTATION SUBMITTED: DWC-60 dispute package

POSITION SUMMARY: None submitted by Requestor

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

DOCUMENTATION SUBMITTED: Response to DWC-60

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)
08-23-04 to 09-22-04	99205 (\$220.30 X 1 DOS = \$220.30) 99212 (\$48.03 X 5 DOS = \$240.15) 97032 (\$20.04 X 12 DOS = \$240.48) 97035 (\$15.78 X 5 DOS = \$78.90) 97140 (\$33.91 X 6 DOS = \$203.46) 97110 (services in dispute have been paid by Respondent) 97112 (services in dispute have been paid by Respondent) E1399 (\$25.00 X 3 DOS = \$75.00)(see note below-although denied as global, services were reviewed by the IRO and found to be medically necessary. In addition HCPCS code E1399 per the 2002 Medical Fee Guideline is not global to other services billed on the dates of service in dispute) 97116 (service not in dispute during timeframe reviewed)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	\$1,058.29
09-24-04 to 02-18-05	99205, 99212, 97032, 97035, 97140, 97110, 97112, E1399 and 97116 Note: Although some services were denied as fee issues the IRO reviewer determined they were not medically necessary. See note below.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	\$0.00

	NOTE: Per Rule 133.308(p)(5) an IRO decision is deemed to be a Division decision and order		
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**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 **majority** of 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 09-12-2005, 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.

The Requestor submitted an updated table on 02-06-06 with information regarding payments made by the carrier. Dates of service/codes previously paid by the carrier will not be included in this review.

CPT code 99080-73 date of service 08-27-04 denied with denial code "U" (service deemed unnecessary medical treatment). The IRO reviewer determined that the office visit on 08-27-04 was medically necessary, based upon the IRO decision which per Rule 133.308(p)(5) is a Division decision and order code, 99080-73 is medically necessary. Reimbursement is recommended in the amount of **\$15.00**.

CPT code 97002 date of service 11-11-04 denied with denial codes "F/435" (Fee Guideline MAR reduction/the value of this procedure is included in the values of the comprehensive procedure). Per the 2002 Medical Fee Guideline code 97002 is global to codes 97032, 97140, 97110 and 97112 all billed on the date of service in dispute. No reimbursement is recommended.

CPT code 99214 date of service 11-22-04 denied with denial codes "F/285" (Fee guideline MAR reduction/office visit is not applicable for this provider type). No payment has been made by the carrier. Documentation was submitted by the Requestor, however, review of the documentation does not support the criteria for CPT code 99214. No reimbursement recommended.

CPT code 99214 date of service 01-10-05 denied with denial codes "F/893" (Fee guideline MAR reduction/code invalid, not covered code or has been deleted from the Texas Fee Schedule). No payment has been made. No payment has been made. Per the 2002 Medical Fee Guideline CPT code 99214 is a valid code. Reimbursement is recommended in the amount of **\$105.45**.

CPT code 97002 date of service 01-26-05 denied with denial codes "G/435" (unbundling/the value of this procedure is included in the value of the comprehensive procedure). Per the 2002 Medical Fee Guideline code 97002 is global to codes 97032, 97140, 97110 and 97112 all billed on the date of service in dispute. No reimbursement is recommended.

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

8 Texas Administrative Code Sec. 133.308 and 134.202(c)(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 reimbursement in the amount of \$1,178.74. 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:

02-13-06

\_\_\_\_\_  
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.**



## CompPartners Final Report



CompPartners Peer Review Network  
Physician Review Recommendation  
Prepared for TDI/DWC

**Claimant Name:**

**Texas IRO #:**

**MDR #:** M5-05-3245-01

**Social Security #:** \_\_\_\_\_

**Treating Provider:** Lee Nickel, L.P.T.

**Review:** Chart-Retrospective

**State:** TX

**Amended Date:** 2/10/06

**Review Data:**

- Notification of IRO Assignment dated 9/9/05, 1 page.
- Receipt of Request dated 9/9/05, 1 page.
- Medical Dispute Resolutions Request dated 8/12/05, 2 pages.
- List of Treating Providers (date unspecified), 1 page.
- Table of Disputed Services dated 2/18/05, 2/17/05, 2/16/05, 2/11/05, 2/10/05, 2/9/05, 2/4/05, 2/2/05, 1/31/05, 1/28/05, 1/26/05, 1/25/05, 1/21/05, 1/19/05, 1/17/05, 1/11/05, 1/10/05, 1/7/05, 1/5/05, 1/3/05, 12/31/04, 12/27/04, 12/23/04, 12/21/04, 12/20/04, 12/17/04, 12/16/04, 12/15/04, 12/10/04, 12/8/04, 12/6/04, 12/2/04, 12/1/04, 11/30/04, 11/24/04, 11/23/04, 11/22/04, 11/19/04, 11/18/04, 11/15/04, 11/11/04, 11/8/04, 11/5/04, 11/4/04, 11/2/04, 10/29/04, 10/28/04, 10/27/04, 10/22/04, 10/19/04, 10/18/04, 10/15/04, 10/13/04, 10/11/04, 10/6/04, 10/5/04, 10/1/04, 9/30/04, 9/28/04, 9/24/04, 9/22/04, 9/20/04, 9/17/04, 9/14/04, 9/13/04, 9/10/04, 9/8/04, 9/7/04, 9/3/04, 9/1/04, 8/30/04, 8/27/04, 8/25/04, 8/23/04. 24 pages.
- Explanation of Benefits dated 7/13/05, 7/13/05, 3/15/05, 3/4/05, 2/23/05, 2/4/05, 1/26/05, 1/25/05, 1/18/05, 1/10/05, 1/4/05, 12/29/04, 12/28/04, 12/23/04, 12/10/04, 11/4/04, 10/26/04, 25 pages.
- Facsimile Transmittal dated 9/16/05, 9/12/05, 3 pages. ( 2 copies)
- Fax Confirmation dated 9/16/05, 9/14/05, 9/12/05, 3 pages.
- Fax Cover Sheet dated 9/29/05, 1 page.
- Letter of Dispute dated 9/29/05, 2 pages.
- Progress Report dated 5/18/04, 1 page.
- Neurological Evaluation dated 8/10/04, 3 pages.
- Initial Medical Report dated 9/7/04, 8/27/04, 8/23/04, 10 pages.
- Daily Progress Note dated 2/25/05, 2/23/05, 2/21/05, 2/18/05, 2/17/05, 2/16/05, 2/11/05, 2/10/05, 2/9/05, 2/4/05, 2/2/05, 1/31/05, 1/31/05, 1/28/05, 1/26/05, 1/25/05, 1/21/05, 1/19/05, 1/17/05, 1/11/05, 1/10/05, 1/7/05, 1/5/05, 1/3/05, 12/31/04, 12/27/04, 12/23/04, 12/21/04, 12/20/04, 12/17/04, 12/16/04, 12/15/04, 12/10/04, 12/8/04, 12/6/04, 12/2/04, 12/1/04, 11/30/04, 11/24/04, 11/23/04, 11/22/04, 11/19/04, 11/18/04, 11/15/04, 11/11/04, 11/8/04, 11/5/04, 11/4/04, 11/2/04, 10/29/04, 10/28/04, 10/27/04, 10/22/04, 10/19/04, 10/18/04, 10/15/04, 10/13/04, 10/11/04, 10/8/04, 10/6/04, 10/5/04, 10/1/04, 9/28/04, 9/24/04, 9/22/04, 9/20/04, 9/17/04, 9/14/04, 9/13/04, 9/10/04, 9/8/04, 9/7/04, 9/3/04, 9/1/04, 8/30/04, 8/27/04, 8/25/04, 77 pages.
- Subsequent Medical Report dated 3/11/05, 2/10/05, 1/19/05, 1/10/05, 10/8/04, 9/3/04, 18 pages.
- Comprehensive Pain Consultation dated 9/16/04, 6 pages. (2 copies)
- Cervical MRI dated 11/13/04, 1 page.
- Comprehensive Pain Follow-up dated 6/21/05, 5/3/05, 4/19/05, 1/11/05, 12/1/04, 11/2/04 16 pages. (2 copies)
- Electrodiagnostic Evaluation (date unspecified), 2 pages.
- Pain Management Follow-up Evaluation dated 3/22/05, 12/21/04, 10/5/04, 12 pages. (2 copies)
- Operative Report dated 1/12/05, 12/29/04, 6 pages.
- Mental Health Evaluation dated 1/25/05, 5 pages.
- Therapy Re-evaluation dated 3/24/05, 2 pages.

- **List of Exhibits (date unspecified), 1 page.**
- **Position Statement (date unspecified), 3 pages.**
- **Brain MRI dated 10/29/04, 1 page.**
- **Circle of Willis MRA dated 10/29/04, 1 page.**
- **Cervical Spine MRI dated 11/13/04, 1 page.**
- **Clinical EEG dated 9/24/04, 1 page.**
- **Follow-up Note dated 11/8/04, 1 page.**
- **Functional Capacity Evaluation dated 1/19/05, 4 pages.**
- **Functional Capacity Evaluation Summary dated 1/19/05, 14 pages.**
- **Consultation Note dated 4/15/05, 2 pages.**
- **Examination dated 7/7/04, 1 page.**
- **Therapy Re-evaluation dated 3/24/05, 2 pages.**
- **Neuropsychological Evaluation dated 2/28/05, 4 pages.**

**Reason for Assignment by TDI/DWC:** Determine the medical necessity for retrospective office visits, electrical stimulation, ultrasound, manual therapy technique, therapeutic exercises, neuromuscular re-education, durable medical equipment (DME), gait training, for dates of service 8/23/04 through 2/18/05, for the neck and head.

**Determination: PARTIAL. (read below).**

**REVERSED** – the previous denial of disputed services, including office visits, electrical stimulation, ultrasound, manual therapy technique, therapeutic exercises, neuromuscular re-education, durable medical equipment (DME), gait training, within dates of service 8/23/04 to 9/22/04 for a trial of conservative passive and active care.

**UPHELD** – the previous denial of disputed services, office visits, electrical stimulation, ultrasound, manual therapy technique, therapeutic exercises, neuromuscular re-education, durable medical equipment (DME), gait training, after the date of 9/22/04, at which time the trial ended and the patient did not have demonstrable functional improvements or subjective improvements with this treatment since that time up to the disputed dates of service of 2/18/05.

**Rationale:**

**Patient's age:**

**Gender:**

**Date of Injury: \_\_\_\_**

**Mechanism of Injury:** A steel pipe fell off a construction box and struck the patient in the head, followed by a consequent laceration and ER visit to put staples in the head.

**Diagnoses:** Cervical sprain/strain, post laceration head, contusion to head, headaches and Myofascitis.

This patient was first seen in the ER and given staples for his laceration and had follow-up care with US Healthworks. He was referred for a neurological evaluation with William Fleming, M.D. on 8/10/04, who documented full range of motion of cervical spine with no spine tenderness, gait was normal, he could heel and toe walk, motor function was normal and muscle strength was entirely normal. His pain was 8/10. Deep tendon reflexes (DTRs) were entirely normal as was the sensory examination. He was diagnosed with headaches. He then came under the care of a chiropractor, Brett L. Garner, D.C. on 8/27/04, where he received manual therapy techniques and strengthening exercises. Oddly, he had reported opposite findings from the neurologist, Dr. Fleming, M.D., with diminished sensation in the left lip and left facial areas, diminished ranges of motion and motor weakness of 4/5 to the bilateral upper extremities. He had a disturbed taste, a positive Weber test, as well as Romberg, maximum cervical compression Soto Hall and cervical distraction testing.

He was referred to a neurologist M. Athari, M.D. on 9/7/04. The patient had an EEG on 9/24/04, which was normal. He was referred to Walter K. Long, MD for medical management and recommended continued physical therapy and was followed to at least 4/15/05 and he still had a pain scale of 7/10. His pain was from neck pain and headaches. He had stated to Dr. Long, M.D. on the 1/19/05 report that therapy helped with increased function, but not with the pain. A MRI of the brain was performed on 10/29/04, which was normal. An MRA of the circle of Willis was done on 10/29/04 and was normal. A cervical spine MRI was performed on 11/13/04 and was negative for findings. He was subsequently referred for pain management with Andrew McKay, M.D. on 9/16/04 and on 12/1/04 and the patient's pain scale continued to be 6-7/10 and cervical facet joint injections were recommended for this patient.

He had an electromyogram/nerve conduction velocity (EMG/NCV) study performed on 2/16/04, which was also negative. On 12/29/04, he had his first cervical facet injection. On 1/12/05, he had his second cervical facet injection. The patient continued with reports of pain on the follow-up with Dr. McKay on the 4/19/05 visit. A functional capacity evaluation (FCE) report dated 1/19/05 revealed that he scored in the medium duty category for a heavy-duty job demand level as interpreted by Wayne Parks, D.C. On 6/21/05, he was still having reports of cervical pain rated at 6/10 by Dr. McKay's report. He has had a therapy re-evaluation on 3/24/05 and he was recommended for comprehensive pain management program.

Matthew Nance, Ph.D. for a neuropsychologist also evaluated him. He had seriously contemplated suicide, felt distressed, angry and had explosive behavior. Documentation also indicated that he had been receiving physical therapy from Lee Nickel, L.P.T. with dates of service on progress notes from 8/25/04 to 2/25/05. These notes were on a template form with check off or marked with an "X" of information except for the subjective complaints, which were typed in. From 8/25/04 to 9/3/04, his pain was unchanged and he presented with the same complaints of headache and neck pain, which was constant and severe. By 9/14/04, he rated his pain 7/10 and on 9/17/04, it dropped to a 5-6/10. After his first cervical facet injection on 12/29/04, he rated his pain as 6-7/10. There were typed notes of continued constant headache and neck pain and no other objective information was provided on any of these forms. There were only subjective complaints. Overall, the progress notes from Lee Nickel, L.P.T. did not show any significant subjective or objective improvements, which were measurable with regard to function and pain. They basically repeated the same information from date to date. The treatment plan remained unchanged during this timeframe despite the ongoing and unchanged subjective information and despite there being any well-documented objective information included on the progress notes.

A summary from Texas Mutual dated 9/29/05 indicated that from dates of service 8/21/04 to 2/18/05, there were 154 units of therapeutic exercises, 73 units of manual therapy, 68 units of electrical stimulation and 62 units of neuromuscular re-education. Of those items 140 units of therapeutic exercises were reimbursed, 8 units of manual therapy were reimbursed 3 units of electrical stimulation and 62 units of neuromuscular re-education were reimbursed. This left 14 units of therapeutic exercises disputed, 65 units of manual therapy disputed, 65 units of electrical stimulation disputed and 62 units of neuromuscular re-education disputed. The case manager has asked for medical necessity for these disputed items.

Overall, the patient was approximately three months post injury at the time the therapy began on 8/23/04. The claimant had been determined to have no tenderness, no cervical range of motion loss, no sensation loss, normal examination, normal muscle strength noted, normal DTRs as early as 8/10/04 report from the neurologist, Dr. Fleming. The claimant was only recommended medications for his headache and he was treated conservatively up to the point when he was seen by the chiropractor approximately around the time frame of 8/27/04. It would have been reasonable to attempt a trial of continued conservative physical therapy for at least four weeks both passive and active in nature. After this four-week period from 8/23/04, it does not appear that there has been any change in this patient's condition as reported by the therapist Lee Nickel, L.P.T., the chiropractor or the many specialists that he subsequently evaluated the patient.

Therefore, given the recommendations from the ACOEM Guidelines passive care would not have been appropriate after this four lenient four-week trial of care associated with active care and attempts at some degree of improvements. However, there is absolutely no objective information contained in the progress notes from Lee Nickel, L.P.T. to support this ongoing passive and active care beyond four weeks from 8/23/04. This date would be around 9/22/04. The medical necessity for these disputed items is not found beyond the date of 9/22/04 when the patient is documented with no changes subjectively with this treatment plan after the trial of care ended on 9/22/04. Examination charges and electrode charges should also be certified only up to the 9/22/04 date of service. There must be documented and demonstratable information reflecting some form of improvements with this treatment and there simply is not. Ongoing therapy without demonstrable functional improvement is not justified.

The ACOEM Guidelines, Chapter 8, page 173-174 are referenced and it states that there is no high grade scientific evidence to support the effectiveness or ineffectiveness of passive physical modalities such as traction, heat/cold, massage, diathermy, laser, ultrasound, TENS units and biofeedback. These palliative tools may be used on a "trial" basis, but should be monitored closely. Emphasis should focus on functional restoration and return of patients to activities of normal daily living. This patient had no demonstratable improvements objectively and very little, if any subjectively and no subjective improvements after the trial of care would have ended September 22, 2004 with continued reports of constant neck pain and headaches.

The ACOEM Guidelines, Chapter 6 upholds this recommendation, in that it states on page 115, that if a patient fails to functionally improve as expected with treatment, the patient's condition should be reassessed in order to identify incorrect or missed diagnoses. Further treatment should be appropriate for the diagnosed condition and should not be performed simply

because of continued reports of pain. Again, this would be interpreted by this reviewer that physical therapy both active and passive should have ended on or around 9/22/04 after a reasonable 4-week trial of care.

**Criteria/Guidelines utilized:** ACOEM Guidelines, 2<sup>nd</sup> Edition, Chapters 8 and 6.

**Physician Reviewers Specialty:** Chiropractic and Acupuncture.

**Physician Reviewers Qualifications:** Texas Licensed D.C. currently listed on the TWCC ADL list.

**CompPartners, Inc. hereby certifies that the reviewing physician or provider has certified 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 determination prior to referral to CompPartners, Inc.**

#### Your Right to Appeal

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.