



**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 Dispute**

**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: Craig A. Thiry, D.C. 2656 South Loop West Suite 270 Houston, Texas 77054	MDR Tracking No.: M5-05-3289-01
	Claim No.:
	Injured Employee's Name:
Respondent's Name and Address: American Manufacturers Mutual Insurance Box 42	Date of Injury:
	Employer's Name:
	Insurance Carrier's No.:

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

DOCUMENTATION SUBMITTED: DWC-60 package, CMS 1500s and explanations of benefits  
 POSITION SUMMARY: From the table of disputed services "medically necessary"

**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)
09-15-04 to 12-20-04	Electrical stimulation and manual therapy	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	\$0.00
10-13-04 to 12-20-04	Therapeutic activities, neuromuscular re-education and therapeutic exercises	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	\$0.00
09-15-04 to 10-12-04	Therapeutic activities, neuromuscular re-education and therapeutic exercises	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	\$310.10

**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.

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

28 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 \$310.10. The Division finds that the requestor was the not 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:

11-17-05

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



## CompPartners Final Report



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

**Claimant Name:** \_\_\_\_\_  
**Texas IRO # :** \_\_\_\_\_  
**MDR #:** M5-05-3289-01  
**Social Security #:** \_\_\_\_\_  
**Treating Provider:** Craig A. Thirty, D.C.  
**Review:** Chart  
**State:** TX

### Review Data:

- Notification of IRO Assignment dated 9/30/05, 1 page.
- Receipt of Request dated 9/30/05, 1 page.
- Medical Dispute Resolution Request/Response dated 8/19/05, (date unspecified) 2 pages.
- Request for IRO dated 10/10/05, 1 page.
- List of Treating Providers (date unspecified), 1 page.
- Table of Disputed Services dated 12/20/04, 12/17/04, 12/10/04, 12/8/04, 12/2/04, 12/1/04, 11/24/04, 11/23/04, 11/19/04, 11/18/04, 11/15/04, 11/12/04, 11/11/04, 11/10/04, 11/5/04, 11/4/04, 11/3/04, 10/29/04, 10/27/04, 10/25/04, 10/22/04, 10/21/04, 10/18/04, 10/4/04, 9/17/04, 9/15/04, 9 pages.
- Audit of Medical Charges dated 1/17/05, 12/21/04, 12/3/04, 11/23/04, 11/11/04, 10/25/04, 10/19/04, 10 pages.
- Explanation of Review dated 5/5/05, 11 pages.
- Health Insurance Claim Form signed on 12/21/04, 12/17/04, 12/6/04, 11/24/04, 11/16/04, 11/9/04, 11/1/04, 10/25/04, 10/19/04, 10/4/04, 22 pages.
- Daily Visits dated 2/22/05, 1/20/05, 1/18/05, 1/13/05, 1/10/05, 1/6/05, 1/5/05, 1/3/05, 12/20/04, 12/17/04, 12/10/04, 10/22/04, 10/21/04, 10/18/04, 10/15/04, 10/14/04, 10/13/04, 10/4/04, 9/17/04, 9/15/04, 3 pages.
- Re-evaluation dated 11/11/04, 9/15/04, 5 pages.
- SOAP Notes dated 12/20/04, 12/17/04, 12/10/04, 12/8/04, 12/2/04, 11/24/04, 11/23/04, 11/19/04, 11/18/04, 11/15/04, 11/12/04, 11/10/04, 11/5/04, 11/4/04, 11/3/04, 10/29/04, 10/27/04, 10/25/04, 10/22/04, 10/21/04, 10/18/04, 10/15/04, 10/14/04, 10/13/04, 10/4/04, 9/17/04, 12 pages.
- Operative Report dated 6/25/04, 4/8/04, 4/6/04, 2/25/04, 9 pages.
- Orthopedic Report dated 9/21/05, 6/23/05, 4/27/05, 2/22/05, 12/14/04, 10/6/04, 8/26/04, 7/21/04, 7/13/04, 6/18/04, 4/28/04, 2/3/04, 12 pages.
- Physical Therapy Visit dated 10/6/04, 8/26/04, 2 pages.
- Follow-up Visit dated 6/24/05, 12/15/04, 11/17/04, 10/20/04, 9/22/04, 4/26/04, 3/10/04, 3/1/04, 2/11/04, 11/7/03, 11/6/03, 9/22/03, 9/4/03, 8/21/03, 8/7/03, 7/31/03, 24 pages.

- Office Progress Notes dated 10/6/05, 4/27/05, 2/22/05, 12/15/04, 10/7/04, 6/18/04, 4/7/04, 2/4/04, 11/7/03, 10/6/03, 9/24/03, 9/22/03, 9/12/03, 9/10/03, 9/9/03, 13 pages.
- Letter of Medical Necessity dated 9/21/05, 6/24/05, 4/27/05, 10/7/04, 4/28/04, 2/4/04, 6 pages.
- Computerized Muscle Testing dated 11/10/04, 11 pages.
- Range of Motion Testing dated 11/10/04, 7 pages.
- Cover Sheet dated 9/8/03, (date unspecified), 2 pages.
- Notice of Denial of Pre-authorization dated 7/22/05, 1 page.
- Procedure Reports (date unspecified), 2 pages.
- Lumbar Spine CT Scan dated 5/20/05, 4/8/04, 2 pages.
- Lumbar Spine MRI dated 9/15/03, 1 page.
- Thoracic Spine MRI dated 9/15/03, 1 page.
- Lumbar Spine X-ray dated 6/24/05, 4/27/05, 2/22/05, 12/15/04, 10/7/04, 8/26/04, 7/21/04, 7/28/03, 8 pages.
- Evaluation Summary dated 8/7/03, 2 pages.
- Job Requirement Questionnaire signed on 9/2/03, 1 page.
- Last Two Pages of Examination (date unspecified), 2 pages.
- Progress Report dated 10/31/03, 4 pages.
- Report of Medical Evaluation dated 11/21/03, 3 pages.
- Initial Medical Report dated 12/17/03, 1 page.
- Orthopedic Consultation (corrected) dated 1/17/04, 2 pages.
- Orthopedic Consultation dated 1/17/04, 2 pages.
- New Patient Evaluation dated 4/28/04, 4 pages.
- Personal Review of MRI dated 4/7/04, 1 page.
- Fax Transmission Sheets dated 10/12/05, 2 pages.

**Reason for Assignment by TDI/DWC:** Determine the medical necessity for appeal of the previously denied electrical stimulation, manual therapy techniques, therapeutic activities, neuromuscular re-education, and therapeutic exercises from 9/15/04 to 12/20/04.

**Determination: UPHELD** – previously denied electrical stimulation, and manual therapy techniques from 9/15/04 to 12/20/04.

**UPHELD** – previously denied therapeutic activities, neuromuscular re-education, and therapeutic exercise from 10/13/04 to 12/20/04.

**REVERSED** – previously denied therapeutic activities, neuromuscular re-education, and therapeutic exercises from 9/15/04 to 10/12/04.

**Rationale:**

**Patient's age:**

**Gender:**

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

**Mechanism of Injury:** Using a weed eater, and while bending and twisting, felt a pop in his back.

**Diagnoses:** Post lumbar surgery on 6/25/04, thoracolumbar sprain/strain, thoracic segmental dysfunction, lumbar disc disorder, myospasms, thoracic and lumbar segmental dysfunction.

This claimant was initially treated with conservative management with physical therapy and medications by Forney W. Fleming, MD. He subsequently had an MRI of the thoracic spine performed on 9/15/03, which revealed small anterior marginal osteophytes. There were small annular bulgings with the contrast study, with no evidence of herniations. An MRI of the lumbar spine was normal on September 15, 2003. An orthopedic surgery consultation with Dr. Donovan revealed that there was a herniated nucleus pulposus (HNP) at L5-S1 that was not previously diagnosed by the radiologist. This claimant continued with physical therapy and medications, as well as injections, and did not have improvements in his condition. He was given a discogram by Son K. Nguyen, MD on 4/8/04, and the impression was concordant pain at L2-3, L4-5 and L5-S1. He remained off work due to lack of light duty made available from his employer. He subsequently came under the care of an orthopedic surgeon, Guy Fogel, MD, who performed lumbar spine surgery on 6/25 /04. He did not do well following this surgery and was referred for post surgical rehabilitation at a chiropractic facility with Dr. Craig Thiry, DC. He began aggressive physical therapy for post surgical rehabilitation on 9/15/04. His evaluation revealed the patient was complaining of low back pain with soreness and weakness, left leg pain, which felt like a hot rod in his leg, and felt like the femur bone was going to rip out of the skin. He complained of stabbing, burning pain in the back. His numbness in his feet was like pins and needles, which was constant, and he had weakness in both legs. Objectively, there was pain on ranges of motion without specific degrees provided. There was orthopedic test findings which were positive, including Heel walk, Valsalva's, Kemps bilaterally, straight leg raises on the right at 50 degrees, and left at 50 degrees, Patrick Fabere bilaterally, Nachlas bilaterally, and spasms were noted. A follow-up examination on 11/11/04 indicated the subjective information was unchanged and, objectively, he was worse with regard to now straight leg raises were now positive bilaterally at 45 degrees. The previously mentioned orthopedic tests were the same. The daily notes from Dr. Thiry from 9/17/04 through 12/20/04 did not indicate any improvements with this ongoing post surgical rehabilitation and on most of the dates he was unchanged, the same or worse. He saw a pain management specialist, Son K. Nguyen, MD, on 9/22/04. There was an office visit note dated 10/06/04 that indicated that the claimant then came under the care of orthopedic surgeon, William Donovan, MD, who discontinued the back brace he was wearing and advised him to continue rehabilitation therapy. He saw him again on 10/7/04 and advised and cautioned him against manipulation to the back, and reported the back fusion was healing well and the hardware was in place. He continued to be checked by Dr. Donovan, and on each subsequent visit, it was noted there was no loosening of the screws or hardware, and he was healing well. There was a CT scan report of the lumbar spine with contrast dated 5/20/05, which gave an impression of status post wide laminectomy involving the L4-5 and L5-S1 levels, with a three-level pedicular fixation device seen in place at L4, L5 and S1 bilaterally. There was a suggestion of slight contrast enhancement at L4-5 on the left side, compatible with scar tissue. The overall alignment of the fused vertebrae was satisfactory. Then it appears that Dr. Donovan referred the patient to William R. Francis, Jr., MD (specialty not provided). This referral took place on 6/24/05, after non-union was suspected by Dr. Donovan, per X-ray taken that date. He noted that the claimant's most recent CT scan with myelogram, revealed a 2- level non-union at L4-5 and L5-S1, both anteriorly and posteriorly, with very little bone deposition, posteriorly. Brantigan cages placed through the posterior approach and the intervertebral space were loose as well. Screw loosening was also noted on the CT scan, and he advised that this patient needed anterior and posterior repair with removal of the hardware, removal of the Brantigan cages, repair of the L4 to sacrum area with re-fusion and re-instrumentation and subsequent anterior interbody fusion with Core-Lock bone and AOI screw fixation.

With regard to the disputed items the following is determined:

Of the utmost importance is that after the continued post operative therapy was started, as of 9/17/04, nearly three months after the surgical date, there were no improvements documented revealing evidence of benefit from the therapy being provided at Dr. Thiry's office. In fact, the patient remained with very high pain levels, ranging from 8/10 to 10/10, or merely was unchanged, despite the excessive amount of care provided through 12/20/04. It would have been appropriate for a minimum four weeks of this provided active care therapy and then when it was obvious that no improvements were being made, this treatment should have stopped. In fact, there was clear evidence that manual therapy was provided to this claimant in the back, despite warnings from the orthopedic specialist not to have manipulation to the back. He has been diagnosed with loosening of hardware and screws and non-union of his fusion. It is obvious that this active care should have been stopped when this claimant failed to have positive response with this prescribed rehabilitative active care and unprescribed passive care.

References are to the documentation provided and TWCC rules and regulations as well as the appeal references from this provider, which included the ODG Guidelines, and Rehabilitation for the Postsurgical Orthopedic Patient, by Maxey and Magnusson recommendations and Brotzman.

The charges for manual therapy and any passive care such as electrical stimulation should not be covered at all from the dates in question of 9/15/04 to 12/20/04. Brotzman does not address rehabilitation post fusion with instrumentation. The ODG reference for post surgical fusion recommends 34 visits over 16 weeks, however due to the lack of improvement prior to 9/15/04 with his post operative therapy and lack of improvements noted after the 9/15/04 dates of service, with no demonstrable documentation of overall objective benefits and with the persistent and progressing pain, this patient would not have a medical necessity from 9/15/04 to 12/20/04 for continued therapy. The Lisa Maxey physical therapy reference, specifically, does not have recommendations for electrical stimulation or manual therapy for patients who are post fusion with instrumentation.

The active care would be a medical necessity for a trial of four weeks, until 10/12/04, and at that point stopped due to lack of improvements, worsening of symptoms and failure to show functional gains. Reference was made to Maxey for recommendations involving phase III, from post surgery weeks eleven to nineteen, and the table indicated there should not be an increase in pain with this advancement phase; only mild pain was expected and this patient remained at a severe level. On page 168 of the Lisa Maxey and Jim Magnuson reference it indicated specifically that a certain number of patients can be expected to stop progressing at any stage of rehabilitation. The physical therapist should notify the physician if a patient stops making measurable progress at any stage and if possible provide a reason for the lack of progress. This clearly was not done. Therefore, there was no medical necessity proven to continue this treatment plan.

Therefore, all of the charges in this dispute for both active and passive care on 10/13/04 to 12/20/04 are not found to have been a medical necessity and are non-certified. The Brotzman reference is not specific for lumbar fusion with instrumentation. The Maxey reference does not recommend electrical stimulation or manual therapy, and does not indicate that phase III should continue if progression plateaus or complications develop, as with this patient with now obvious loosening of the screws and hardware.

**Criteria/Guidelines utilized:** TDI/DWC rules and regulations.

*Clinical Orthopaedic Rehabilitation*, 2<sup>nd</sup> Edition, by S. Brent Brotzman & Kevin S. Wilk.

Official Disability Guidelines, ninth edition, 2004.

*Rehabilitation for the Postsurgical Orthopedic Patient*, by Maxey and Magnusson.

**Physician Reviewers Specialty:** Chiropractic

**Physician Reviewers Qualifications:** Texas licensed DC, BSRT, FIAMA Chiropractor and is also currently listed on the TDI/DWC ADL list.

**CompPartners, Inc. hereby certifies that the reviewing physician or provider has certified that no known conflicts of interest exist between that provider and the injured employee, the injured employee'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 the decision before the 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.