



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> (X) Health Care Provider ( ) Injured Employee ( ) Insurance Carrier	
Requestor's Name and Address: REHAB 2112 P O BOX 671342 Dallas, Texas 75267-1342	MDR Tracking No.: M5-06-0231-01
	Claim No.:
	Injured Employee's Name:
Respondent's Name and Address: Liberty Mutual Insurance Company Box 28	Date of Injury:
	Employer's Name:
	Insurance Carrier's No.:

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

DOCUMENTATION: DWC-60 dispute package  
POSITION SUMMARY: Per table "Services are medically necessary"

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

DOCUMENTATION: 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)
09-29-04 to 11-24-04	97545-WH-CA (1 unit @ \$128.00 X 35 days = \$4,480.00)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	\$12,528.00
	97546-WH-CA (4 units @ \$256.00 X 25 days = \$6,400.00)		
	97546-WH-CA-59-52 (3 units @ \$48.00 X 11 days = \$528.00)		
	97546-WH-CA-59-52 (2 units @ \$32.00 X 14 days = \$448.00)		
	97546-WH-CA-59-52 (1 unit @ \$16.00 X 6 days = \$96.00)		
	97546-WH-CA (3 units @ \$192.00 X 3 days = \$576.00)		

#### 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 **prevailed** on the disputed medical necessity issues.

CPT code 97750-FC date of service 11-24-04 listed on the table of disputed services is not eligible for review per Rule 134.202(e)(4). A maximum of three FCEs for each compensable injury shall be billed and reimbursed. This FCE is a fourth which is not allowed. No reimbursement recommended.

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

28 Texas Administrative Code Sec. 133.308 and 134.202(e)(4)

**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 \$12,528.00. In addition, the Division finds that the requestor was the prevailing party and is entitled to a refund of the IRO fee in the amount of \$460.00. 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 by:

0-13-06

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date of Findings and Decision

Order by:

01-13-06

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



# PROFESSIONAL ASSOCIATES

## NOTICE OF INDEPENDENT REVIEW

**NAME OF PATIENT:**  
**IRO CASE NUMBER:** M5-06-0231-01  
**NAME OF REQUESTOR:** Rehab 2112  
**NAME OF PROVIDER:** Kent Kelley, D.C.  
**REVIEWED BY:** Licensed by the Texas State Board of Chiropractic Examiners  
**IRO CERTIFICATION NO:** IRO 5288  
**DATE OF REPORT:** 11/29/05 (REVISED 01/09/06)

Dear Rehab 2112:

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 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 decision before referral to the Independent Review Organization.

### REVIEWER REPORT

#### Information Provided for Review:

An MRI of the cervical spine dated 05/28/04 and interpreted by Chris Wright, M.D.  
An MRI of the lumbar spine interpreted by Dr. Wright on 05/28/04  
An evaluation by Thomas Cartwright, M.D. on 06/07/04  
An evaluation with Lenny Jue, M.D. dated 06/08/04  
A TWCC-53 form requesting to change treating physicians dated 06/29/04  
An EMG/NCV study of the bilateral lower extremities dated 07/01/04 and interpreted by Joseph Jenkins, D.C.  
An initial report dated 07/07/04 from John South, D.C. at Accident and Injury Chiropractic  
MRIs of the cervical and lumbar spines dated 07/07/04 and interpreted by Kenneth Lustik, D.A.C.B.R.  
A TWCC-73 form signed by Kent Kelley, D.C. on 07/17/04

A medical consultation with Marlon D. Padilla, M.D. dated 07/20/04  
Additional TWCC-73 forms signed by Dr. Kelley on 08/03/04 and 08/29/04  
An initial Functional Capacity Evaluation (FCE) dated 08/27/04 from Valerie Escalona-Estrada, D.C.  
A comprehensive patient examination dated 08/30/04 and signed by Rafael Gonzalez, L.P.T. from Rehab 2112  
Daily therapy at Rehab 2112 with Mr. Gonzalez dated 08/30/04, 09/01/04, 09/03/04, 09/08/04, 09/09/04, 09/13/04, 09/15/04, 09/16/04, and 09/17/04  
An evaluation with Homero R. Anchondo, M.D. dated 09/20/04  
Another FCE dated 09/22/04 from Dr. Escalona-Estrada  
A chiropractic modality review dated 09/23/04 from George Sage, D.C.  
Daily work hardening notes dated 09/29/04, 09/30/04, 10/01/04, 10/04/04, 10/05/04, 10/06/04, 10/07/04, 10/08/04, 10/11/04, 10/12/04, 10/13/04, 10/14/04, 10/15/04, 10/18/04, 10/19/04, 10/20/04, 10/21/04, 10/21/04, 10/22/04, 10/25/04, 10/26/04, 10/27/04, 10/28/04, 10/29/04, 11/01/04, 11/02/04, 11/03/04, 11/04/04, 11/05/04, 11/08/04, 11/09/04, 11/10/04, 11/11/04, 11/12/04, 11/15/04, 11/16/04, 11/17/04, 11/18/04, 11/19/04, 11/22/04, 11/23/04, and 11/24/04  
An interim FCE dated 10/20/04 from Dr. Escalona-Estrada

A work hardening review dated 10/29/04 from Dr. Sage at Professional Reviews, Inc.  
A letter from Dr. Kelley dated 11/08/04 to Dr. Anchondo  
A history and physical dated 11/11/04 from Sady Ribeiro, M.D. at Pain and Headache Clinic.  
A final FCE dated 11/24/04 and signed by Dr. Escalona-Estrada  
An operative report dated 12/04/04 from Dr. Ribeiro  
A Designated Doctor Evaluation dated 12/17/04 from Irwin S. Novak, M.D.  
A TWCC-69 from dated 12/17/04 from Dr. Novak  
A Functional Ability Evaluation (FAE) dated 12/17/04 from Karl D. Erwin, M.D.  
A reconsideration dated 09/13/05 from Thomas Sato, D.C. at Professional Reviews, Inc. A  
A Medical Dispute Resolution (MDR) request dated 09/26/05 from Michelle Ivey, D.C.

### **Clinical History Summarized:**

An MRI of the cervical spine dated 05/28/04 was normal. The lumbar spine MRI revealed a 2 mm. broad based disc bulge at L5-S1. On 06/08/04, Dr. Jue recommended bilateral L4-L5 and L5-S1 facet joint injections and bilateral sacroiliac joint injections. Norco was refilled at that time. Dr. South evaluated the patient on 07/07/04 and recommended treatment, as well as a two month off work status. On 07/20/04, Dr. Padilla prescribed Hydrocodone, Soma, and Motrin. He also recommended an MRI and gave the patient work restrictions. On 08/24/04, Dr. Kelley signed a TWCC-73 form taking the patient off work through an unknown date. The patient had an initial FCE on 08/27/04 that stated he was functioning in the light to light medium physical demand level. The patient attended daily therapy at Rehab 2112 from 08/30/04 through 09/20/04. The patient attended work hardening from 09/20/04 through 11/24/04 at Rehab 2112. This included exercises and group psychology. An interim FCE on 10/20/04 indicated the patient was still functioning in the light to light medium physical demand level. On 11/08/04, Dr. Anchondo recommended the patient take Lodine and Flexeril, as well as Tylenol #3 as needed. Dr. Ribeiro recommended an epidural steroid injection (ESI), but wanted to try conservative treatment with a Lidoderm Patch first. The patient's final FCE on 11/24/04 indicated she was functioning in the light medium to medium physical demand level. On 12/04/04, the patient underwent the ESI with Dr. Ribeiro. In a Designated Doctor Evaluation on 12/17/04, Dr. Novak felt the patient had reached Maximum Medical Improvement (MMI) on 12/07/04 and was assigned 5% whole person impairment rating. In an FCE performed on 12/17/04, Dr. Erwin felt the patient was currently functioning in the medium physical demand level. Dr. Sato from Professional Reviews, Inc. provided a reconsideration on 09/13/05. On 09/26/05, Dr. Ivey requested an MDR regarding the patient's care.

### **Disputed Services:**

Work hardening from 09/29/04 through 11/24/04

### **Decision:**

I agree with the requestor. The work hardening program 09/29/04 through 11/24/04 was reasonable and medically necessary as related to the original injury.

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

After reviewing the medical records provided, it was found that the work hardening performed between 09/29/04 through 11/24/04 was medically necessary to treat this patient. According to the American Physical Therapy Association, in regard to work hardening programs, to be eligible for work hardening, a patient must have identified physical functional behavioral and vocational deficits that interfere with work and be at a point of resolution of the initial injury such as that participation in the program would not be prohibited.

The records showed that the patient was referred for a Functional Capacity Evaluation (FCE) on 09/27/04, which showed the patient was functioning at a light to light medium physical demand category. The patient's job level was listed as requiring a very heavy demand level.

In addition, according to the *North American Spine Society Guidelines* for unrelenting low back pain, the patient had reached the tertiary phase of care, which began 16 weeks after the initial injury. One of the interventions in the tertiary phase is a multidisciplinary work hardening program. In short, according to the *American Physical Therapy Association Work Hardening Guidelines*, work hardening and the *North American Spine Society Guidelines* for unrelenting low back pain, this patient met those guidelines for entrance into a work hardening program, which made the work hardening program from 09/29/04 through 11/24/04 medically necessary to treat this patient.

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 01/09/06 from the office of Professional Associates.

Sincerely,

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Lisa Christian  
Secretary/General Counsel