



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

**Type of Requestor:** (X) Health Care Provider ( ) Injured Employee ( ) Insurance Carrier

Requestor's Name and Address:

**Eric A VanderWerff DC**  
**615 N O'Connor Rd Suite 12**  
**Irving TX 75061**

MDR Tracking No.: M5-06-0288-01

Claim No.:

Injured Worker's Name:

Respondent's Name and Address:

**Liberty Mutual Box 28**

Date of Injury:

Employer's Name:

Insurance Carrier's No.:

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

DWC-60 package. Position summary: Claimant entitled to all health care per TLC 408.021. Medical documentation to support medical necessity will be sent to IRO upon request.

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

Response to DWC-60 package. Position summary: Denied by peer review.

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

Date(s) of Service	CPT Code(s) or Description	Medically Necessary?	Additional Amount Due (if any)
1-24-05 to 6-9-05	97012, 97140-59, 97150, 98941, 97112	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	\$0.00

#### 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 did **not** prevail on the disputed medical necessity issues.

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

28 Texas Administrative Code Sec. 133.308

**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:**

\_\_\_\_\_, Medical Dispute Officer

1-25-06

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

# P-IRO

An Independent Review Organization  
7626 Parkview Circle  
Austin, Texas 78731  
**Phone: 512-346-5040**  
**Fax: 512-692-2924**

Amended January 23, 2006  
Amended January 3, 2006  
December 28, 2005

TDI-DWC Medical Dispute Resolution  
Fax: (512) 804-4868

Delivered via Fax

Patient / Injured Employee	_____
TDI-DWC #	_____
MDR Tracking #:	M5-06-0288-01
IRO #:	5312

P-IRO, Inc. has been certified by the Texas Department of Insurance as an Independent Review Organization. The TDI-Division of Worker's Compensation (DWC) has assigned this case to P-IRO for independent review in accordance with DWC Rule 133.308 which allows for medical dispute resolution by an IRO.

P-IRO has performed an independent review of the proposed care to determine if the adverse determination was appropriate. In performing this review, all relevant medical records and documentation utilized to make the adverse determination, along with any documentation and written information submitted, was reviewed.

The independent review was performed by a matched peer with the treating doctor. This case was reviewed by a licensed Provider board certified and specialized in Chiropractic Care. The reviewer is on the DWC Approved Doctor List (ADL). The P-IRO Panel Member/Reviewer is a health care professional who has signed a certification statement stating that no known conflicts of interest exist between the Reviewer 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 carriers health care providers who reviewed the case for decision before referral to IRO America for independent review. In addition, the reviewer has certified that the review was performed without bias for or against any party to the dispute.

## RECORDS REVIEWED

Notification of IRO assignment, information provided by The Requestor, Respondent, and Treating Doctor(s), including:

1. Notification of IRO Assignment.
2. Medical Dispute Resolution Request/Response.
3. Table of Disputed Services.

4. Explanation of Payment from Liberty Mutual, 1-24-05 through 6-9-05.
5. Physical Performance Evaluation, 12-15-04.
6. Cervical MRI report, 1-13-05.
7. Lumbar MRI report, 1-13-05.
8. Electrodiagnostic report, 1-21-05.
9. Physical Performance Evaluation, 3-2-05.
10. Upper extremity electrodiagnostic report, 3-9-05.
11. Functional Abilities Evaluation, 3-9-05.
12. IME by F. Robinson, M.D., 3-9-05.
13. Peer review by F. Robinson, M.D., 3-17-05.
14. Physical Performance Evaluation, 4-5-05.
15. Impairment evaluation by S. Reno, M.D. (physician selected by the treating doctor), 4-8-05.
16. Behavioral Health Evaluation by S. Young-Whigham, LCSW-ACP, 4-14-05.
17. DD Evaluation by James Knott, M.D., 4-27-05.
18. Billing Retrospective Review by George Sage, DC, 4-28-05.
19. Pre-Authorization report from E. Antonelli, M.D., 5-2-05.
20. Appeal report from T. Sato, D.C., 5-12-05.
21. Physical Performance Evaluation, 6-8-05.
22. Physical Performance Evaluation, 7-13-05.
23. Impairment evaluation by S. Reno, M.D. (physician selected by the treating doctor), 7-18-05.
24. Report from V. Culliper, RN, 11-8-05.
25. Summary report from Eric VanderWerff, D.C., dated 12-5-05 (28 pages).
26. Electrodiagnostic report from S. Reno, M.D.
27. Initial Report-Addendum from Millennium Chiropractic, 1-5-05.  
Daily Notes from Millennium Chiropractic, 1-4-05 through 7-25-05, (approximately 93 visits).

### **CLINICAL HISTORY**

The Patient sustained a work-related injury on \_\_\_. The Patient was initially evaluated at the Concentra Medical Center on 10-26-04 and referred to physical therapy. The Patient reported neck pain and headaches. Diagnosis was a strain type injury without radiculopathy. The Patient was returned to work without restrictions on 10-28-04. The Patient was not very compliant with the physical therapy recommended.

CT scan of the head was performed on 11-23-04 and read as normal.

The Patient worked full duty for approximately 6-8 weeks. The Patient changed treating doctors to Eric VanderWerff, D.C. and was taken off work.

Physical Performance Evaluation dated 12-15-04 revealed cervical flexion was 36°, extension 35°, left lateral flexion 24°, and right lateral flexion 32°. Lumbar flexion was 66°, extension 18°, left lateral flexion 34°, and right lateral flexion 32°.

Cervical MRI dated 1-13-05 demonstrated a right paracentral disc herniation at C4-C5 producing mild canal stenosis and cord flattening, milder disc disease at C3-C4, C5-C6, and C6-C7, 1-2 mm disc bulge at C3-4, and 1 mm disc protrusions at C5-C6 and C6-C7.

Lumbar MRI dated 1-13-05 demonstrated disc desiccation with a 2-3 mm disc protrusion at L5-S1.

NCV testing on 1-21-05 demonstrated asymmetrical F-wave latency suggesting an L4 or L5 radiculopathy on the right (non-concordant).

Physical Performance Evaluation on 3-2-05 revealed cervical flexion was 40°, extension 35°, left lateral flexion 30°, and right lateral flexion 30°. Lumbar flexion was 60°, extension 20°, left lateral flexion 35°, and right lateral flexion 35°.

Upper extremity EMG testing on 3-9-05 did not reveal any evidence of radiculopathy. The NCV component demonstrated slowing at the left ulnar nerve at the elbow.

On 3-9-05, an independent evaluation was performed by F. Robinson, M.D. The report described the mechanism of injury as falling backwards approximately 4 feet, landing on the back of his head. The Patient reported neck pain, back pain, arm pain, and leg pain rated 8/10. Cervical flexion was 50°, extension 50°, left lateral flexion 40°, right lateral flexion 60°, right rotation 70°, and left rotation 70°. Reflex and sensory testing was unremarkable. Lumbar flexion was 60°, extension 30°, right lateral bending 20°, and left lateral bending 25°. Left SLR was 70° and right SLR was 70°. Diagnoses included lumbar strain and cervical strain. He felt the chiropractic treatment was 'excessive' and 'no longer reasonable and necessary.' He felt The Patient could return to work full duty immediately. FCE dated 3-9-05 indicated The Patient provided inconsistent effort and sub-maximal effort. The PDC was indeterminate. F-K lift, K-S lift, S-overhead lift, and carry capacity were all 25 pounds. Push was 30.4 pounds and pull was 26.1 pounds. Maximum leg lift was 80.6 pounds, maximum arm lift was 28.2 pounds, and high near lift was 33.7 pounds. Oswestry questionnaire was 64%. NDI was 60%. Dallas Pain Questionnaire demonstrated perceived interference as 57% with daily activities, 75% work/leisure activities, 25% anxiety/depression, and 15% social interest.

Physical Performance Evaluation dated 4-5-05 revealed cervical flexion was 45°, extension 35°, left lateral flexion 30°, and right lateral flexion 30°. Lumbar flexion was 60°, extension 20°, left lateral flexion 35°, and right lateral flexion 35°. Oswestry questionnaire was 62%.

On 4-8-05, The Patient was evaluated by S. Reno, M.D. (doctor selected by the treating doctor). Diagnoses included neuropathy, cervical radiculopathy, lumbar disc injury, and peroneal nerve injury.

Electrodiagnostic testing by S. Reno demonstrated 'carpal tunnel syndrome and brachial neuritis (mild).'

On 4-14-05, The Patient was evaluated by S. Young-Whigham, LMSW-ACP. The Patient reported constant headaches radiating to the temporal region causing blurred vision. The symptoms were described as constant. His primary area of pain was right shoulder, neck, head, low back, and radiating right leg pain. Numerical pain scale was 7/10. His symptoms were constant. GAF was 60. She recommended a Work Hardening Program.

On 4-27-05, The Patient was evaluated by James Knott, M.D. (doctor selected by the commission). The Patient reported neck pain, low back pain, mid back pain, upper back pain, headaches, numbness, pin/needles, tingling, burning, and weakness in the right leg and hand despite > 4 months of chiropractic care. Numerical pain scale ranged between 5/10 at best and 7/10 at worst. Pain was consistent. Sitting SLR was 90° bilaterally. Motor, sensory, and reflex testing were within normal limits. Right arm range of motion, left arm range of motion, left wrist

range of motion and right wrist range of motion were within normal limits. The Patient was assigned 5% WPI and determined to have reached maximum medical improvement on 4-27-05.

A Retrospective Review was performed on 4-28-05. Chiropractic care beyond 24 visits was determined unreasonable.

A WHP was approved by T. Sato, D.C. on 5-12-05.

Physical Performance Evaluation was performed on 6-8-05. Lumbar flexion was 60°, extension 20°, left lateral flexion 35°, and right lateral flexion 35°. Cervical flexion was 45°, extension 35°, left lateral bending 30°, right lateral bending 30°, right rotation 85°, and left rotation 85°. The Patient was able to lift 78 pounds on an occasional basis. Due to the 'excellent progress' additional Work Hardening was recommended.

The Physical Performance Evaluation dated 7-13-05 indicated The Patient did not reach the very-heavy work category; therefore, he should be returned to work with restrictions

On 7-18-05, The Patient was evaluated by S. Reno, M.D. (doctor selected by the treating doctor). The Patient was assigned maximum medical improvement as of 7-18-05 and assigned 17% WPI.

According to the Daily Notes from E. VanderWerff, D.C., The Patient was seen for approximately 93 visits. According to a report from V. Culliper, RN dated 11-8-05, The Patient was seen for 91 visits. Additionally, the report indicates the 'carrier has no knowledge that the patient returned to work.' Furthermore, The Patient was receiving chiropractic 'treatment' at the same time he was in a Work Hardening Program.

On 12-5-05, Dr. VanderWerff submitted a 28 page reconsideration report.

#### **DISPUTED SERVICE (S)**

Under dispute is the retrospective medical necessity of mechanical traction (97012), manual therapy techniques (97140-59), group therapy (97150), chiropractic manipulation (98941), and neuromuscular reeducation (97112) for the dates 1/24/05 thru 6/9/05.

#### **DETERMINATION / DECISION**

The Reviewer agrees with the determination of the insurance carrier.

#### **RATIONALE/BASIS FOR THE DECISION**

The Reviewer's assessment is that the treatment performed between 1-24-05 and 6-9-05 was not reasonable or necessary.

The lumbar MRI findings, physical examination findings, and electrodiagnostic testing are not consistent with a symptomatic L5-S1 disc herniation. First, a 2-3 mm disc protrusion at L5-S1 would not produce an L4 and/or L5 radiculitis suggested by the NCV. It would have to be a far lateral L5-S1 HNP to produce an L5 radiculopathy. Additionally, the inter-tester documentation does not demonstrate physical examination findings consistent with nerve root impingement/inflammation (L. Rainwater, M.D., F. Robinson, M.D., and James Knott, M.D.). With this stated, the appropriate lumbar diagnosis is a sprain/strain complicated by 'referred' leg symptoms, underlying and pre-existing disc degeneration, and a laborious occupation.

When applying guidelines, scientific evidence, and clinical experience, the appropriate diagnosis is essential. Dr. VanderWerff is correct when he said applying sprain/strain literature to a 'symptomatic disc herniation' is not appropriate. However, the documentation does not suggest

The Patient had a symptomatic cervical disc herniation or a symptomatic lumbar disc herniation. The chiropractic treatment performed before the Work Hardening Program did not demonstrate adequate lasting improvement to justify the care.

The Reviewer's assessment is that the chiropractic treatment performed 'during' participation in the WHP was not reasonable or necessary. Dr. Sato authorized a 4-week WHP on 5-12-05. Virginia Culliper, RN indicated The Patient was participating in a WHP after 5-05. Yet chiropractic care continued through 6-9-05. There is absolutely no reason to continue with mechanical traction (97012), manual therapy techniques (97140-59), group therapy (97150), chiropractic manipulation (98941), and neuromuscular reeducation (97112) while a patient is participating in a WHP.

### **Screening Criteria**

#### 1. Specific:

- Spine 1996, 1997, 2002
- Official Disability Guidelines
- ACOEM Guidelines

#### 1. General:

In making his determination, the Reviewer had reviewed medically acceptable screening criteria relevant to the case, which may include but is not limited to any of the following: Evidence Based Medicine Guidelines (Helsinki, Finland); Texas Medical Foundation: Screening Criteria Manual (Austin, Texas); Texas Chiropractic Association: Texas Guidelines to Quality Assurance (Austin Texas); Texas Medical Foundation: Screening Criteria Manual (Austin, Texas); Mercy Center Guidelines of Quality Assurance; any and all guidelines issued by DWC or other State of Texas Agencies; standards contained in Medicare Coverage Database; ACOEM Guidelines; peer-reviewed literature and scientific studies that meet nationally recognized standards; standard references compendia; and findings; studies conducted under the auspices of federal government agencies and research institutes; the findings of any national board recognized by the National Institutes of Health; peer reviewed abstracts submitted for presentation at major medical associates meetings; any other recognized authorities and systems of evaluation that are relevant.

### **CERTIFICATION BY OFFICER**

P-IRO has performed an independent review solely to determine the medical necessity of the health services that are the subject of the review. P-IRO has made no determinations regarding benefits available under the injured employee's policy.

As an officer of P-IRO Inc., I certify that there is no known conflict between the Reviewer, P-IRO and/or any officer/employee of the IRO with any person or entity that is a party to the dispute.

P-IRO is forwarding by mail or facsimile, a copy of this finding to the DWC.

Sincerely,  
**P-IRO Inc.**



Ashton Prejean

**President & Chief Resolutions Officer**

### **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.

The party appealing this decision shall deliver a copy of its written request for a hearing to other party involved in this dispute.

**I hereby certify, in accordance with DWC Rule 102.4 (h), that a copy of this Independent Review Organization decision was sent DWC via facsimile, U.S. Postal Service or both on this 28<sup>th</sup> day of December, 2005.**

**Name and Signature of P-IRO Representative:**

Sincerely,  
**P-IRO Inc.**



Ashton Prejean

**President & Chief Resolutions Officer**