



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: Dr. Patrick R.E. Davis 115 W. Wheatland Road Suite 101 Duncanville, Texas 75116	MDR Tracking No.: M5-06-0508-01
	Claim No.:
	Injured Employee's Name:
Respondent's Name and Address: Liberty Insurance Corporation Box 28	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: Per the table of disputed services "Documentation supports medical necessity"

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

NO RESPONSE 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)
02-15-05	98940-25, 97140-59, 97112-59, 97116-59, 97110-59 and 97110-59	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	\$0.00
01-31-05 to 03-23-05	98940, 97110 (2 units), 97140 (1 unit) and 97530 (1 unit)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	\$2,745.39
01-31-05 to 04-08-05	97112, 97116 and 97035	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	\$0.00
03-25-05 to 04-08-05	98940-25, 97140-59, 97530-59, 97110-59	<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 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 \$2,745.39. 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:

01-12-06

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

# MEDICAL REVIEW OF TEXAS

[IRO #5259]

10817 W. Hwy. 71  
Phone: 512-288-3300

Austin, Texas 78735  
FAX: 512-288-3356

## NOTICE OF INDEPENDENT REVIEW DETERMINATION

TDI-WC Case Number:	
MDR Tracking Number:	M5-06-0508-01
Name of Patient:	
Name of URA/Payer:	Patrick R.E. Davis, DC
Name of Provider: (ER, Hospital, or Other Facility)	
Name of Physician: (Treating or Requesting)	Patrick R.E. Davis, DC

January 6, 2006

An independent review of the above-referenced case has been completed by a chiropractic doctor. The appropriateness of setting and medical necessity of proposed or rendered services is determined by the application of medical screening criteria published by Texas Medical Foundation, or by the application of medical screening criteria and protocols formally established by practicing physicians. All available clinical information, the medical necessity guidelines and the special circumstances of said case was considered in making the determination.

The independent review determination and reasons for the determination, including the clinical basis for the determination, is as follows:

See Attached Physician Determination

Medical Review of Texas (MRT) hereby certifies that the reviewing physician is on the Division of Workers' Compensation Approved Doctor List (ADL). Additionally, said physician has certified that no known conflicts of interest exist between him 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 MRT.

Sincerely,

Michael S. Lifshen, MD  
Medical Director

cc: Division of Workers' Compensation

## CLINICAL HISTORY

Available documentation received and included for review consists of initial and subsequent reports and treatment records from Dr. Wilson (DC), initial and subsequent reports including operative report Dr. Aggarwal (MD), Page 2 of an exam / EMG study from Dr. Morrison (MD)

Mr. \_\_\_\_, a 38-year-old male, injured his lower back and neck while employed as a dishwasher for \_\_\_\_\_. He was lifting a 25 lb bag of rice when he developed lower back pain radiating into the left leg as well as neck pain with numbness into left arm. He presented to Dr. Chris Wilson, (DC) that same day and was assessed with a working diagnosis of left-sided lumbosacral and cervical radiculopathy, accompanied by pain, weakness and muscle spasms.

He was placed on a conservative treatment regime consisting of manipulation and adjunctive physiotherapeutic modalities with some response. He persisted with lower back pain and underwent some electrodiagnostic studies which were positive for an L5 radiculopathy on the left per Dr. Morrison (MD). He also underwent an MRI of the lumbar spine, which was reported as "positive" in the records, although no actual report is available for review.

He was then referred to Dr. Aggarwal, an anesthesiologist/pain management specialist for a series of three lumbar epidural steroid injections. The first ESI was performed on 1/26/05, the last one on 3/16/05.

In conjunction with the ESI's, the patient continued with physical medicine interventions at a frequency of three times per week.

## REQUESTED SERVICE(S)

Medical necessity of therapeutic activities (97530), therapeutic exercises (97110), manual therapy technique (97140), chiropractic manipulation (98940) neuromuscular reeducation (97112) ultrasound (97035) gait training (97116). Dates of service 01/31/05 through 04/08/05.

## DECISION

There is medical necessity for the following dates of service: all dates between 01/31/05 – 03/23/05 EXCEPT service date 02/15/05, which is considered unnecessary

On the above dates of service, approve one unit of manual therapy (97140), manipulation (98940), two units of therapeutic exercises (97110) and one unit of therapeutic activities (97530) only per encounter.

Deny codes 97112, 97116, or 97035 on all dates of service.

No services after 03/23/05 are considered necessary.

## RATIONALE/BASIS FOR DECISION

*The standard of medical necessity in Workers Comp, according to the Texas labor code 408.021 (entitlement to medical benefits) is that an employee who sustained a compensable injury is entitled to all healthcare reasonably required by the nature of the injury as and when needed. The employee is specifically entitled to healthcare that: (1) cures or relieves the effects naturally resulting from the compensable injury; (2) promotes recovery; or (3) enhances the ability of the employee to return to or retain employment.*

The patient was essentially focused exercise/rehabilitation program in conjunction with a series of epidural steroid injections.

The care was certainly extensive and beyond traditionally accepted treatment guideline time frames for such an injury. However, considering the positive structural and electrodiagnostic test results, treatment

through 03/23/05 can be justified. Manual and exercise interventions in conjunction with ESI are supported by the literature, notably in Spine 2002, Vol 1, 28. Page 11-16. This states that spinal injections have *"a longer duration effect when combined with structural rehabilitation, which reduces time to a maximum medical improvement, reduces the need for series of injections by protocol, is most psychologically sound, reduces morbidity, may improve return to work times and may reduce the need for surgical intervention."*

The patient did seem to make some functional gains throughout this time frame, with a reduced level of pain and increased strength noted. There was no further substantial gain noted beyond 03/23/05, and by that time the patient had had more than ample opportunity from his treatment history to be discharged to perform any further rehabilitation on his own.

There was insufficient documentation to describe why "neuromuscular reeducation (97112)" or gait training (97116) was required, or even that it was performed. This should be considered part of the therapeutic activities/functional exercises that were also billed on the same dates of service. As such, medical necessity is not supported for these codes. Likewise, no medical necessity was established in the documentation for ultrasound, (97035) at such a late stage in the patient's course of care, especially in conjunction with ESI.

The patient had sequential "daily" visits between 02/14/05 and 02/16/05 which were not substantiated as necessary, especially at such a late point into the rehabilitation program. Medical necessity was not established for such sequential dates and therefore the visit on 02/15/05 is deemed unnecessary.

**References:**

Spine 2002, Vol 1, 28. Page 11-16.

Hansen DT: Topics in Clinical Chiropractic, 1994, volume one, No. 4, December 1994, pp. 1-8 with the article "Back to Basics: Determining how much care to give and reporting patient progress".

AMA Guides to the Evaluation of Physical Impairment, 4<sup>th</sup> Edition

Souza T: Differential Diagnosis for a Chiropractor: Protocols and Algorithms, 1997; chapter 1, pp. 3-25.

Liebenson C. Commentary: Rehabilitation and chiropractic practice. JMPT 1996; 19(2):134140

The Medical Disability Adviser, fourth edition (Presley Reed, MD.)

Certification of Independence of Reviewer

As the reviewer of this independent review case, I do hereby certify that I have no known conflicts of interest between the 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 decision before referral to the IRO.

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.

Chief Clerk of Proceedings  
Division of Workers' Compensation  
P.O. Box 17787  
Austin, Texas 78744

Or fax the request to (512) 804-4011. A copy of this decision must be attached to the request.

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

Signature of IRO Employee: \_\_\_\_\_

Printed Name of IRO Employee: Cindy Mitchell