



**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

<b>Type of Requestor:</b> (X) Health Care Provider ( ) Injured Employee ( ) Insurance Carrier	
Requestor=s Name and Address:	MDR Tracking No.: M5-06-0654-01
Horizon Health % Bose Consulting, L. L. C. P. O. Box 550496 Houston, Texas 77255	Claim No.:
	Injured Employee's Name:
Respondent's Name and Address:  City of Houston, Box 42	Date of Injury:
	Employer's Name:
	Insurance Carrier's No.:

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

Documents include the DWC-60 package. Position Summary states, "Treatment was medically reasonable and necessary."

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

Documents include the DWC-60 response.

#### PART IV: SUMMARY OF DISPUTE AND FINDINGS - Medical Necessity Services

Date(s) of Service	CPT Code(s) or Description	Medically Necessary?	Additional Amount Due (if any)
3-28-05 – 5-13-05	CPT codes 99212, 97110, 97112, 97140	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	0

#### 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

**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 additional reimbursement for the services involved in this dispute and is not entitled to a refund of the paid IRO fee.

**Findings and Decision by:**

Donna Auby

2-22-06

Authorized Signature

Typed Name

Date of Findings and Decision

**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.**

February 15, 2006

TX DEPT OF INS DIV OF WC  
AUSTIN, TX 78744-1609

CLAIMANT: \_\_\_\_

EMPLOYEE: \_\_\_\_

POLICY: M5-06-0654-01

CLIENT TRACKING NUMBER: M5-06-0654-01-5278

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Medical Review Institute of America (MRIoA) has been certified by the Texas Department of Insurance as an Independent Review Organization (IRO). The Texas Department of Insurance Division of Workers Compensation has assigned the above mentioned case to MRIoA for independent review in accordance with DWC Rule 133 which provides for medical dispute resolution by an IRO.

MRIoA 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. Itemization of this information will follow.

The independent review was performed by a peer of the treating provider for this patient. The reviewer in this case is on the DWC approved doctor list (ADL). The reviewing provider has no known conflicts of interest existing 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 decision before referral to the IRO.

**Records Received:**

Records Received from the State:

- Notification of IRO Assignment, 1/12/06 – 2 pages
- Medical Dispute Resolution Request/Response, 1/12/06 – 2 pages
- Table of Disputed Charges, 3/28/05-5/13/05 – 4 pages
- Explanation of Review, 6/8/05 – 3 pages

Records Received from the Requestor:

- Bose Consulting List of Exhibits, undated – 2 pages
- Bose Consulting Position Statement, undated – 3 pages
- Mana MRI, LC MRI of Lumbar Spine, 1/18/05 – 1 page
- Functional Capacity Evaluation, 3/8/05 – 11 pages
- Letter to Dr. Schwartz from Dr. Reuben 1/31/05 – 2 pages
- Regional Specialty Clinic Initial Patient Consult, 1/24/05 – 2 pages
- Horizon Health Notes, 3/28/05-5/13/05 – 9 pages
- Letter of Appeal from Horizon Health, 1/20/06 – 1 page

**Summary of Treatment/Case History:**

The records indicate the patient alleges an industrial injury on \_\_\_\_ while employed by the City of Houston. The patient alleges she was sitting in her chair when she bent over to lift a set of Mylar drawings when she felt pain in her low back. On 1/18/05 the patient had a MRI of the lumbar spine that was unremarkable. She was seen on 1/31/05 by an orthopedic surgeon, Dr. Reuben, who recommended epidural steroid injections and physical therapy. On 3/8/05 the patient underwent a functional capacity evaluation.

It appears the patient has been treating with Carrie Schwartz, D.C. during this period of time, although it is unclear when she actually became a patient of Dr. Schwartz. The only chart notes received for review date from 3/28/05 to 5/13/05, cover 12 visits and total \$4,043.13. The other documentation indicates the MRI was ordered by Dr. Schwartz on 1/18/05 which indicates the patient was in treatment with Dr. Schwartz as early as 1/18/05 and probably before.

Dr. Schwartz ordered a functional capacity evaluation from Scott C. Harrell, D.C., of Impairment and Functional Assessment Services, Inc., which was performed on 3/8/05. Dr. Harrell determined the patient needed further medical care. The evaluation included handgrip strength, pinch strength, heart rate, static push strength, dynamic lifting, dynamic carrying, cardiovascular testing, etc.

On 5/13/05 Horizon Health performed a physical examination of the patient with unremarkable findings. The only measurable objective finding was a decrease in lumbar range of motion. The diagnosis was lumbar disc herniation and abdominal ???. Treatment plan was active rehab 3x/wk. The last chart note dated 5/13/05 indicates the patient rated her pain at 4-5/10 and received conditioning (no description), joint mobilization, myofascial release, stretching, stabilization, postural, neuromuscular reeducation, with a fair response to treatment, continue with current protocol and the patient had difficulties with active exercise only. There is no evidence in the documentation that the patient is receiving chiropractic manipulation, only physical therapy modalities/procedures.

There is no evidence the patient has been released from active care or when she will be released.

**Questions for Review:**

ITEM(S) IN DISPUTE: #99212 (Office visit), #97110 (Therapeutic exercises), #97112 (Neuromuscular Re-education), #97140 (Manual Therapy technique), which ere denied for medical necessity.

DATE(S) OF SERVICE IN DISPUTE: 3/28/05 - 5/13/05.

**Explanation of Findings:**

ITEM(S) IN DISPUTE: #99212 (Office visit), #97110 (Therapeutic exercises), #97112 (Neuromuscular Re-education), #97140 (Manual Therapy technique), which ere denied for medical necessity.

DATE(S) OF SERVICE IN DISPUTE: 3/28/05 - 5/13/05.

Medical necessity is not shown for dates of service 3/28/05 to 5/13/05 and beyond.

At issue in this case is the physical therapy modalities/procedures being provided to a patient who is 3 months post-injury and still has perceived pain complaints. The ACOEM guidelines indicate after 90 days a patient is considered to be chronic not acute or subacute. There is very little scientific evidence that physical therapy modalities/procedures have any impact on a patient's outcome for a patient who is 3 months post-injury. The guidelines further indicate lack of support for use of physical therapy modalities/procedures for the treatment of low back pain.

Treatment is heavily based upon a MRI report that showed 1 or 2 mm bulges. There is absolutely no evidence of any herniations, simply very small bulges that have no impact on the cord or nerve roots. It is very unclear why the MRI was ordered in the first place, as the patient was definitely not a surgical candidate, there were no progressive neurological deficits and there was no evidence of a strong suspicion of underlying pathology. These are the only reasons to order advanced imaging. There is high-quality science that clearly indicates bulges in a large number of asymptomatic patients as well as frank herniations in asymptomatic patients. 1 or 2 mm bulges are totally insignificant.

The patient experienced a lumbar sprain/strain. The usual course of treatment for a minor sprain/strain is up to a maximum of 9 visits over a maximum of 4 weeks. The ACOEM guidelines as well as Milliman, McKesson and Mercy Center guidelines all indicate a maximum of 4 weeks of passive care. The patient should have been started early on a self-directed home exercise program of strengthening, stretching, increasing flexibility and muscle tone. Such a program does not require licensed supervision or be performed in a gym or an office. It can be done in the patient's home with appropriate education/instruction. In the absence of an exercise program the physical therapy modalities/procedures are of no value in resolving the complaints.

There is no medical necessity shown for a very lengthy functional capacity evaluation that covered everything from cardiovascular (for a patient who performs a sedentary job), to computerized muscle testing, when what was required was minimal intervention by the provider and getting the patient started on a home exercise program.

**Conclusion/Decision to Not Certify:**

Medical necessity is not shown for the on-going physical therapy modalities/procedures.

**Applicable Clinical or Scientific Criteria or Guidelines Applied in Arriving at Decision:**

This decision is based upon documentation, local and national community standards and the following references:

**References Used in Support of Decision:**

1. Occupational Medicine Practice Guidelines, 2nd Edition, American College of Occupational and Environmental Medicine, OEM Press, 2004. Chapter 12, page 288-289, 300, 304, and page 308, Table 12-8 "Physical treatment methods," and "Injections."
2. Milliman Care Guidelines, Milliman USA, Inc., 9th Edition. Ambulatory Care. Chronic Pain Section, Lumbar Pain Section.
3. Guidelines for Chiropractic Quality Assurance and Practice Parameters, The Proceedings of the Mercy Center Consensus Conference, Gaithersburg, MD, 1993, Aspen Publishers. pp 120-121 Passive Care.
4. Hurwitz EL, Morgenstern H, et al. UCLA Low Back Study. J Manip Physio Ther 2002-25(1) pp 10-20.
5. Bulletin on Rheumatic Diseases, April 2001.
6. Boden SD, Davis DO, Dina TS, et al. Abnormal magnetic-resonance scans of the lumbar spine in asymptomatic subjects. J Bone Joint Surgery 1990; 72-1(3): 403-408.
7. Jarvik JG, Deyo RA. Diagnostic Evaluation of Low Back Pain with Emphasis on Imaging. Ann Intern Med 2002; 137:586-597.
8. QualityFIRST Guidelines, McKesson Health Solutions, LLC. Chronic Pain Section, Thoracic and Low Back Pain Section.

This reviewer has been provided by a licensed chiropractor in active practice for over twenty years. This reviewer is a Board eligible Chiropractic Orthopedist and is a member of their state Chiropractic Association and the American Chiropractic Association. This reviewer specializes in disability evaluation, industrial injuries, roentgenology and independent medical examinations and is active in continuing education related to disability and impairment ratings. The reviewer has additional qualifications and training in Acupuncture. This reviewer is certified by their State Chiropractic Association in Industrial Disability examinations and evaluations.

MRIOA is forwarding this decision by mail, and in the case of time sensitive matters by facsimile, a copy of this finding to the DWC.

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Case Analyst: Jamie C ext 583