



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 and Fee Dispute

#### 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.: M5-06-1092-01
Edward Wolski, M. D. Wol+Med 2436 I 35 East, South, Ste. 336 Denton, Texas 76205	Claim No.:
	Injured Employee's Name:
Respondent's Name and Address:	Date of Injury:
	Employer's Name:
	Insurance Carrier's No.:
Indemnity Insurance Company of North America, Box 15	

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

Documents include the DWC 60 package.

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

No response received.

#### 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)
4-11-05 – 6-15-05	CPT codes 97110, 97530, 97113, 95851, 97012, 97799, 97750-FC, 96152, 97124, 97537	<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.

Based on review of the disputed issues within the request, the Division has determined that **medical necessity was not the only issue** to be resolved. This dispute also contained services that were not addressed by the IRO and will be reviewed by Medical Dispute Resolution.

On 3-8-06 the Medical Review Division submitted a Notice to requestor to submit additional documentation necessary to support the charges and to challenge the reasons the respondent had denied reimbursement within 14 days of the requestor's receipt of the Notice.

CPT code 97537 on 5-24-05 and 6-11-05 was denied by the carrier as "F-Fee Guideline MAR reduction." The carrier made no payment and gave no valid reason for not doing so. Recommend reimbursement per Rule 134.202(c)(1) of \$130.44 (32.61 X 4 units).

CPT code 97110 on 5-24-05 and 6-11-05 was denied by the carrier as "F-Fee Guideline MAR reduction." The carrier made no payment and gave no valid reason for not doing so. Recent review of disputes involving CPT Code 97110 by the Medical Dispute Resolution section indicate overall deficiencies in the adequacy of the documentation of this Code both with respect to the medical necessity of one-on-one therapy and documentation reflecting that these individual services were provided as billed. Moreover, the disputes indicate confusion regarding what constitutes "one-on-one." Therefore, consistent with the general obligation set forth in Section 413.016 of the Labor Code, the Division has reviewed the matters in light all of the requirements for proper documentation. The MRD declines to order payment because no office notes were submitted to clearly delineate exclusive one-on-one treatment nor did the requestor identify the severity of the injury to warrant exclusive one-to-one therapy. Reimbursement not recommended.

CPT code 97530 on 5-24-05 and 6-11-05 was denied by the carrier as "F-Fee Guideline MAR reduction." The carrier made no payment and gave no valid reason for not doing so. Recommend reimbursement per Rule 134.202(c)(1) of \$140.60 (35.15 X 4 units).

CPT code 97799 on 5-24-05 was denied by the carrier as "F-Fee Guideline MAR reduction." The carrier made no payment and gave no valid reason for not doing so. Texas Labor Code 413.011 (d) and Rule 133.304 (i) (1-4) places certain requirements on the Carrier when reducing the services for which the Division has not established a maximum allowable reimbursement. The Carrier is required to develop and consistently apply a methodology to determine fair and reasonable reimbursement and explain and document the method used for the calculation. The Carrier in this case has not provided a methodology as required by the rule. Recommend reimbursement of this DOP code.

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

28 Texas Administrative Code Sec. 133.308, 134.202(c)(1) and Rule 133.304 (i) (1-4), Texas Labor Code 413.011 (d).

#### **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 a refund of the paid IRO fee. The Division has determined that the requestor is entitled to reimbursement for the services involved in this dispute in the amount of \$271.04 plus DOP amount. 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 and Order by:

Donna Auby

4-19-06

Authorized Signature

Typed Name

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.**

April 4, 2006

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

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CLAIMANT: \_\_\_  
EMPLOYEE: \_\_\_  
POLICY: M5-06-1092-01  
CLIENT TRACKING NUMBER: M5-06-1092-01

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:**

FROM THE STATE:

Notification of IRO assignment 3/7/06 – 1 page  
Texas Department of Insurance Division of Workers' Compensation form 3/8/06 – 1 page  
Medical dispute resolution request/response form – 1 page  
Provider form – 1 page  
Table of disputed services – 5 pages  
Explanation of review 5/4/05 – 1 page  
Explanation of review 5/17/05 – 1 page  
Explanation of review 6/14/05 – 1 page  
Explanation of review 6/23/05 – 2 pages  
Explanation of review 6/23/05 – 2 pages  
Explanation of review 6/15/05 – 1 page  
Explanation of review 6/24/05 – 1 page  
Explanation of review 6/14/05 – 2 pages  
Explanation of review 6/20/05 – 1 page  
Explanation of review 6/29/05 – 1 page  
Explanation of review 7/1/05 – 1 page  
Explanation of review 8/4/05 – 1 page  
Explanation of review 7/14/05 – 1 page  
Explanation of review 8/29/05 – 1 page  
Explanation of review 6/29/05 – 1 page  
Explanation of review 7/14/05 – 1 page  
Explanation of review 7/14/05 – 1 page

FROM THE REQUESTOR/Edward F. Wolski, MD:

Request for reconsideration 9/29/05 – 3 pages  
Rationale for increased reimbursement 5/3/04 – 2 pages  
Texas Labor Code: Sec. 408.021. Entitlement to medical benefits – 1 page  
Peer review done in 2004 by David Niekamp, BS, DC – 2 pages  
MRI lumbar spine report 5/20/04 – 3 pages  
History and physical for pain management 3/15/05 – 3 pages  
Concentra peer review 8/19/04 – 7 pages  
Texas Workers' Compensation work status report 10/11/05 – 1 page  
Patient procedure history 4/11/05 – 6/15/05 – 2 pages  
Calendar for weeks of therapy 4/05 – 6/05 – 3 pages  
Primary rehab progress notes 4/11/05 – 2 pages  
SI joint education and exercise program 4/11/05 – 2 pages

Primary rehab progress notes 4/12/05 – 2 pages  
Primary rehab progress notes 4/14/05 – 2 pages  
Pool therapy chart 4/14/05 – 5/3/05 – 1 page  
Primary rehab progress notes 4/18/05 – 2 pages  
Primary rehab progress notes 4/19/05 – 2 pages  
Primary rehab progress notes 4/21/05 – 2 pages  
Primary rehab progress notes 4/25/05 – 2 pages  
Primary rehab progress notes 4/26/05 – 2 pages  
Primary rehab progress notes 4/28/05 – 2 pages  
Primary rehab progress notes 5/2/05 – 2 pages  
Computerized spinal range of motion exam 5/2/05 – 1 page  
Primary rehab progress notes 5/3/05 – 2 pages  
Primary rehab progress notes 5/5/05 – 2 pages  
Functional capacity evaluation 5/16/05 – 6 pages  
Functional capacity evaluation questionnaire 5/10/05 – 5 pages  
Job description/task analysis questionnaire –1 page  
Computerized spinal range of motion exam 5/16/05 – 10 pages  
Modified Naughton treadmill test worksheet – 1 page  
Functional capacity evaluation – initial 5/9/05 – 1 page  
Primary rehab progress notes 5/24/05 – 2 pages  
Primary rehab progress notes 5/30/05 – 2 pages  
Primary rehab progress notes 5/31/05 – 2 pages  
Primary rehab progress notes 6/2/05 – 2 pages  
Primary rehab progress notes 6/9/05 – 2 pages  
Primary rehab progress notes 6/10/05 – 2 pages  
Primary rehab progress notes 6/11/05 – 2 pages  
Primary rehab progress notes 6/14/05 – 2 pages  
Primary rehab progress notes 6/15/05 – 2 pages

FROM THE RESPONDENT/ACE/USA ESIS:

HCFA billing sheet 4/14/05 – 4/19/05 – 1 page  
HCFA billing sheet 4/11/05 – 4/14/05 – 1 page  
HCFA billing sheet 4/19/05 – 4/25/05 – 1 page  
HCFA billing sheet 4/26/05 – 1 page  
HCFA billing sheet 4/28/05 – 1 page  
HCFA billing sheet 5/2/05 – 1 page  
HCFA billing sheet 5/3/05 – 1 page  
HCFA billing sheet 5/5/05 – 1 page  
HCFA billing sheet 5/16/05 – 1 page  
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Explanation of review 6/8/05 – 1 page  
Explanation of review 6/17/05 – 1 page  
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Explanation of review 6/23/05 – 2 pages  
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Explanation of review 8/13/05 – 1 page

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Explanation of review 8/29/05 – 1 page  
Explanation of review 7/14/05 – 1 page  
Explanation of review 7/14/05 – 1 page

### **Summary of Treatment/Case History:**

This case involves a male patient with a date of injury of \_\_\_\_\_. He injured his back while lifting a 30 lb. box of potatoes. He was diagnosed with acute strain/sprain of the low back. He received chiropractic treatments, physical rehabilitation modalities (not specified), epidural injections, and had a rhizotomy in early 2005. The patient had a functional capacity exam on 3/8/05, but the results were not available to review. The patient's past medical history is significant for an old disc problem in his low back for which he received injections of a lysing agent into a disc space (about 15 years ago).

He was out of work for 2 years after the work related lumbar injury in \_\_\_\_\_, and was out of work 18 months after a work injury in \_\_\_\_\_. His current evaluations state: "Mr. \_\_\_\_\_ exhibits significant psychosocial issues that may interfere with recovery and return to work in any capacity. The longer he stays out of work, the less likely he will be to return to work. He is at high risk for developing a long-term disabled lifestyle. This patient's extensive medical care over a period of nearly 1 year has not successfully restored his function as yet"

He received multiple modalities again, from 4/11/05 to 6/15/05. This has included therapeutic exercises, therapeutic activities, aquatic therapy, range of motion measurements, mechanical traction, aqua massage, repeat functional capacity exam, massage therapy, health and behavioral interventions, and community/work reintegration training. The patient had an MRI of the lumbar spine on 5/20/04 that showed 3-4 mm disk protrusion at L3-4 with degenerative changes, mild to moderate central canal stenosis at L4-5 with 3 mm disc protrusion with disc material contacting but not displacing the L4 nerve root, and 2-3 mm disc bulge at L5-S1 not displacing the L5 nerve root. As the patient had a prior history of lumbar disc disease, it cannot be determined if these findings are new or chronic.

### **Questions for Review:**

Therapeutic exercises (#97710), therapeutic activities (#97530), aquatic therapy (#97113), ROM measurement (#95851), mechanical traction (#97012), phys med pro (#97799), functional capacity exam (#97750-FC), health & behavioral interventions 15 min face to face individual (#96152), massage therapy (#97124) and community/work reintegration training, etc, direct one-on-one contact by provider ea 15 min (#97537).

### **Explanation of Findings:**

#97710 - therapeutic exercises are not indicated, as the notes indicate the patient has failed to be restored to function despite nearly a year of extensive medical care. The letters of appeal from the treating physicians office indicate the patient has improved, but a review of the notes show him to fluctuate between feeling better to feeling worse and back again. No clear improvement is noted overall.

The patient could be trained in a home exercise program. Noted psychosocial stressors also inhibiting further improvement.

#97530 - therapeutic activities are not indicated, as the notes indicate the patient has failed to be restored to function despite nearly a year of extensive medical care. The patient could be trained in a home based exercise program

#97113 - aquatic therapy is not indicated, as no random controlled trial found that patient that are getting aquatic therapy, are also getting land-based therapy.

#95851- range of motion (ROM) measurements are not medically indicated, as it is not shown how this would help the patient get back to work.

#97012 - mechanical traction is not indicated. BMJ, Clinical Evidence Concise, Vol 14, page 381 states traction is likely to be ineffective or harmful.

#97799 - Phys med pro (billed for aqua massage) is not indicated. This is just a form of massage. Not indicated, BMJ, Clinical Evidence Concise, Vol 14, page 381 states: One systematic review found insufficient evidence about the effects of massage compared to inactive treatments or other treatments.

#97750- functional capacity exam is not indicated, as the patient had just had one 2 months prior to this one in May.

#96152 health and behavioral intervention 15 minutes face to face is not indicated, as the notes indicate the patient has failed to be restored to function despite nearly a year of extensive medical care. The patient could be continued in a home exercise program.

#97124 - massage therapy is not indicated, BMJ, Clinical Evidence Concise, Vol 14, page 381 states: One systematic review found insufficient evidence about the effects of massage compared to inactive treatments or other treatments.

#97537 community/work reintegration training, direct one on one contact by provider 15 min each: is not indicated, as the notes indicate the patient has failed to be restored to function despite nearly a year of extensive medical care. The patient could be given home exercise program.

**Conclusion/Decision to Not Certify:**

Therapeutic exercises (#97710), therapeutic activities (#97530), aquatic therapy (#97113), ROM measurement (#95851), mechanical traction (#97012), phys med pro (#97799), functional capacity exam (#97750-FC), health & behavioral intervention es 15 min face to face individual (#96152), massage therapy (#97124) and community/work reintegration training, etc, direct one-on-one contact by provider ea 15 min (#97537).

The therapeutic exercises, therapeutic activities, aquatic therapy, ROM measurement, mechanical traction, phys med pro, functional capacity exam, health & behavioral intervention, massage therapy and community /work reintegration are not medically indicated based upon the above rationale.

**References Used in Support of Decision:**

Milliman Care Guidelines®

Ambulatory Care

10th Edition: Low Back Pain and Lumbar Spine Conditions

Harte AA, Baxter GD, Gracey JH. The efficacy of traction for back pain: a systematic review of randomized controlled trials. Archives of Physical Medicine and Rehabilitation 2003;84

BMJ, Clinical Evidence Concise, Vol 14, Chapter: Low back Pain, Chronic

Philadelphia Panel evidence-based clinical practice guidelines on selected rehabilitation interventions for low back pain. Phys Ther 2001 Oct;81(10):1641-74

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The physician who provided this review is certified by the American College of Osteopathic Family Physicians. This reviewer is a member of the American Osteopathic Association. This reviewer has been in active practice since 1990.

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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1215377.1

Case Analyst: Cherstin B ext 597