



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

Type of Requestor: (X) Health Care Provider () Injured Employee () Insurance Carrier	
Requestor's Name and Address: Health and Medical Practice Associates 324 North 23rd Street Suite 201 Beaumont TX 77707	MDR Tracking No.: M5-06-1191-01
	Claim No.:
	Injured Worker's Name:
Respondent's Name and Address: Liberty Mutual Ins 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: Medically necessary.

PART III: RESPONDENT'S PRINCIPLE DOCUMENTATION AND POSITION SUMMARY

Response to DWC-60 package. Position summary: Denied per peer review as not medically necessary?

PART IV: SUMMARY OF DISPUTE AND FINDINGS

Date(s) of Service	CPT Code(s) or Description	Medically Necessary?	Amount Due (if any)
3-14-05 to 7-8-05	97032, 97140, 97110, 97124, 97530	<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

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.



PROFESSIONAL ASSOCIATES

NOTICE OF INDEPENDENT REVIEW

NAME OF PATIENT:
IRO CASE NUMBER: M5-06-1191-01
NAME OF REQUESTOR: Health and Medical Practice Associates
NAME OF PROVIDER: Patrick McMeans, M.D.
REVIEWED BY: Board Certified in Orthopedic Surgery
IRO CERTIFICATION NO: IRO 5288
DATE OF REPORT: 05/17/06

Dear Health and Medical Practice Associates:

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.

This case was reviewed by a physician reviewer who is Board Certified in the area of Orthopedic Surgery 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:

Physical therapy with Sylvia Haney, D.C. dated 05/03/00, 05/04/00, 05/05/00, 05/06/00, 05/08/00, 05/30/00, 05/31/00, 06/01/00, 06/06/00, 06/08/00, 06/10/00, 09/01/00, 09/05/00, 09/08/00, 09/12/00, 09/14/00, 09/18/00, 09/20/00, 09/27/00, 10/20/00, 11/03/00, 11/15/00, 11/29/00, 01/08/01, 01/10/01, 01/26/01, 03/16/01, 04/24/01, 04/27/01, 04/30/01, 05/04/01, 05/08/01, and 05/09/01
An MRI of the lumbar spine interpreted by Brent L. Mainwaring, M.D. dated 06/05/00
An impairment rating evaluation with Keith A. Evans, D.C. dated 06/21/00
Another impairment rating evaluation with Dr. Haney dated 06/29/00
Evaluations with Dr. Haney dated 09/14/00, 10/20/00, 11/03/00, 11/15/00, 11/29/00, 01/08/01, and 01/26/01
A letter from David J. Doperak, D.C. at Professional Reviews, Inc. dated 11/07/00
Evaluations with Samuel Bourm, M.D. dated 07/16/01, 08/28/01, 11/06/01, 11/29/01, 12/01/01, 12/02/01, 12/13/01, 01/21/02, and 05/30/02

MRIs of the right shoulder and cervical spine interpreted by John K. Miller, M.D. dated 08/24/01
A letter from Jon P. Obermiller, M.D. dated 09/10/01
Physical therapy with an unknown provider (the signature was illegible) dated 09/18/01, 10/04/01, 10/05/01, 10/08/01, 10/10/01, 10/12/01, 10/15/01, 10/17/01, 10/19/01, 10/22/01, 10/24/01, 10/26/01, 12/18/01, 12/19/01, 01/02/02, 01/03/02, 01/04/02, 01/07/02, 01/09/02, 01/11/02, 01/14/02, 01/16/02, 01/29/02, 01/30/02, 02/01/02, 02/04/02, 02/06/02, 02/13/02, 02/15/02, 02/18/02, 02/20/02, and 02/22/02
A letter from Steven S. Packard of Packard & Packard Attorneys at Law dated 09/21/01
A letter from Liberty Mutual Group dated 11/16/01
Laboratory studies from Dr. Bourn dated 11/29/01
An operative report from Dr. Bourn dated 11/30/01
A pathology report interpreted by Larry E. Kane, M.D. dated 11/30/01
TWCC-53 forms dated 12/17/01, 08/01/03, 06/03/05, and 08/29/05
A letter from Dr. Bourn dated 02/04/02
A letter of a Benefits Review Conference (BRC) dated 02/12/02

A Designated Doctor Evaluation with Nick S. Pomonis, D.O. dated 03/13/02
A retrospective peer review from William R. Culver, M.D. dated 04/09/02
Letters "To Whom It May Concern" from Dr. Bourn dated 06/06/02 and 08/07/02
A letter regarding the dispute resolution denial from Cathy Haidusek at TWCC dated 03/11/03
Evaluations with James A. Ghadially, M.D. dated 10/17/03, 03/12/04, 08/20/04, 10/01/04, and 01/28/05
Evaluations with William J. Lowery, Jr., P.A.-C. for Dr. Ghadially dated 10/29/03, 11/14/03, 04/30/04, 07/09/04, 10/15/04, 10/29/04, 11/12/04, 12/10/04, 02/25/05, and 04/08/05
Operative reports from Dr. Ghadially dated 01/13/04, 04/26/04, and 11/01/04
X-rays of the cervical spine interpreted by Dr. Ghadially dated 03/12/04, 11/19/04, 12/10/04, and 04/08/05
A letter "To Whom It May Concern" from Dr. Ghadially dated 07/09/04
A cervical and lumbar myelogram CT scan interpreted by Dr. Ghadially and Jim Cain, M.D. dated 07/15/04
A CT scan of the head interpreted by Peter Agomuo, M.D. dated 07/30/04
An emergency room visit with an unknown provider (the signature was illegible) dated 07/30/04
Laboratory studies from Michael Kessler, M.D. dated 07/30/04
A nursing note from Karen Groff, R.N. dated 07/30/04
Authorization requests for Ambien and Skelaxin dated 08/20/04 and 08/23/04
A cold call activity check on the patient dated 09/23/04
A prescription from Dr. Ghadially dated 10/27/04
Intraoperative cervical spine examination was performed with Snehal Mehta, M.D. dated 11/01/04
A pathology report was interpreted by Mehri Jalali, M.D. dated 11/01/04
A certificate of medical necessity from Dr. Ghadially dated 11/01/04
An authorization request for Clonazepam dated 11/04/04
A Required Medical Evaluation (RME) with Karl D. Erwin, M.D. dated 11/17/04
A letter from W. F. Miller, Adjuster to Liberty Mutual Insurance Company dated 12/06/04
A peer review analysis from Paul Scoles, M.D. dated 12/06/04
Evaluations with Donald Colwell, D.C. dated 01/12/05, 02/25/05, 04/18/05, and 05/11/05
Chiropractic treatment with Dr. Colwell dated 01/12/05, 01/14/05, 01/19/05, 01/21/05, 01/24/05, 01/26/05, 01/28/05, 01/31/05, 02/02/05, 02/07/05, 02/10/05, 02/11/05, 02/14/05, 02/16/05, 02/21/05, 02/23/05, 02/25/05, 02/28/05, 03/07/05, 03/09/05, 03/11/05, 03/14/05, 03/28/05, 03/30/05, 04/06/05, 04/08/05, 04/11/05, 04/13/05, 04/15/05, 04/18/05, 04/20/05, 04/22/05, 04/25/05, 05/02/05, 05/04/05, 05/06/05, 05/10/05, 05/11/05, 05/13/05, 05/18/05, 05/20/05, 05/25/05, 05/27/05, 06/17/05, 07/01/05, and 07/08/05

An authorization request for Tramadol on 01/31/05
An authorization request for Amoxapine dated 04/22/05
A billing retrospective review with Thomas B. Sato, D.C. dated 05/19/05
An evaluation with Mr. Lowery for Paul Jennings, M.D. dated 05/20/05
A letter of medical necessity from Dr. Jennings dated 06/09/05
A letter of appointment from Southwest Medical Examination Services dated 06/20/05
An evaluation with Ernest T. Roman, M.D. dated 07/08/05
A Functional Capacity Evaluation (FCE) with Dr. Erwin dated 07/13/05
An RME with Douglas M. Stauch, M.D. dated 07/13/05

Prescriptions from Dr. Roman dated 07/19/05 and 07/31/05
Evaluations with Richard A. Pizzini, D.C. dated 08/31/05, 09/20/05, and 11/08/05
X-rays of the cervical and lumbar spine interpreted by Dr. Pizzini dated 08/31/05
Chiropractic therapy with Dr. Pizzini dated 09/01/05 and 09/02/05
A Notice of Disputed Issue(s) and Refusal to Pay Benefits form dated 09/06/05
A concurrent review from Mitchell Kurzner, M.D. dated 09/19/05
Operative reports with Boris E. Payan, M.D. dated 11/02/05 and 12/02/05
A CT scan of the cervical spine interpreted by Douglass Conner, M.D. dated 11/02/05
An authorization request for Celebrex from Dr. Payan dated 11/02/05
An evaluation with Ron Ziegler, Ph.D. dated 11/23/05
A Physical Performance Evaluation (PPE) with Dr. Pizzini dated 11/23/05
An evaluation with Dr. Payan dated 12/01/05
A letter from Sandra Wolever at Liberty Mutual Group dated 12/23/05
Evaluations with Jose Reyes, Jr., M.D. dated 12/17/05 and 01/24/06
Individual therapy and biofeedback with Larry Wilson, M.Ed., L.P.C. dated 01/05/06, 01/12/06, 01/27/06, and 02/03/06
A response to peer review from Dr. Colwell dated 01/18/06
A letter of reconsideration from Dr. Sato dated 02/15/06
A letter from Kelly Lee dated 03/30/06

Clinical History Summarized:

Physical therapy was performed with Dr. Haney from 05/03/00 through 05/09/01 for a total of 33 sessions. An MRI of the lumbar spine interpreted by Dr. Mainwaring on 06/05/00 was normal. On 06/21/00, Dr. Evans placed the patient at Maximum Medical Improvement (MMI) with a 4% whole person impairment rating. An MRI of the right shoulder interpreted by Dr. Miller on 08/24/01 revealed a small rotator cuff tear, tendinosis/tendinopathy, AC joint hypertrophy with impingement, and a small humeral head cyst. An MRI of the cervical spine interpreted by Dr. Miller on 08/24/01 revealed multilevel degenerative disease and a C4-C5 disc protrusion. Physical therapy was performed with an unknown provider from 09/18/01 through 02/22/02 for a total of 32 sessions. On 11/30/01, Dr. Bourn performed right shoulder surgery. On 03/13/02, Dr. Pomonis felt the patient was at MMI at that time with a 15% whole person impairment rating. On 11/14/03, Mr. Lowery noted the patient's left shoulder was not compensable, but she was being set up for an MRI of the lower back and thoracic spine and spinal localization was also recommended. Dr. Ghadially performed cervical epidural steroid injections (ESIs) on 01/13/04 and 04/26/04. Cervical and lumbar myelogram CT scans interpreted by Dr. Cain on 07/15/04 revealed disc protrusions from C2-C7 and from L2-S1 with moderate foraminal narrowing at C6-C7 and L4-L5. A CT scan of the head interpreted by Dr. Agomuo on 07/30/04 was normal. Cervical spine surgery was performed by Dr. Ghadially on 11/01/04. On 11/17/04, Dr. Erwin felt the patient was suffering from a progression of a disease of life and would not require any further treatment. On 12/06/04, Mr. Miller noted that a Contested Case Hearing (CCH) was set for 01/26/05. On 12/06/04, Dr. Scoles felt purchase of a bone growth stimulator was reasonable and necessary. Chiropractic treatment was performed with Dr. Colwell from 01/12/05 through 07/08/05 for a total of 46 sessions. X-rays of the cervical spine interpreted by Dr. Ghadially on 04/08/05 showed a solid fusion from C4 through C7. An FCE with Dr. Erwin on 07/13/05 indicated the patient was functioning at the sedentary physical demand level, which met her job requirements. On 07/13/05, Dr. Stauch noted the patient had several positive Waddell's signs and felt her treatment and medications were no longer reasonable or necessary. The cervical discogram CT scan interpreted by Dr. Payan and Dr. Conner on 11/02/05 revealed a positive discogram at C7-T1 with multilevel vertebral osteoarthritis and degenerative disc disease. Dr. Pizzini recommended a pain management program on 11/08/05. On 11/23/05, Dr. Ziegler recommended a pain management program. An intradiscal local anesthetic challenge test at C5-C6 was performed by Dr. Payan on 12/02/05. On 12/23/05, Ms. Wolever at Liberty Mutual Group approved six sessions of biofeedback and individual therapy. Individual therapy and biofeedback were performed with Mr. Wilson on 01/05/06, 01/12/06, 01/27/06, and 02/03/06.

Disputed Services:

Electrical stimulation (97032), manual therapy techniques (97140), therapeutic exercises (97110), therapeutic activities (97530), and massage (97124) from 03/14/05 to 07/08/05

Decision:

I disagree with the requestor. The electrical stimulation (97032), manual therapy techniques (97140), therapeutic exercises (97110), therapeutic activities (97530), and massage (97124) from 03/14/05 to 07/08/05 were not reasonable or necessary.

Rationale/Basis for Decision:

This patient has undergone a significant amount of passive treatment. The patient had failed to improve with an anterior cervical discectomy and fusion. The patient underwent a three level anterior cervical discectomy and fusion for which the recovery rate has often been less than 50%. The utilization of those modalities in the treatment of a failed anterior cervical fusion was not likely to improve the results. The medical justification for those modalities was not present in the scientific literature. Therefore, electrical stimulation (97032), manual therapy techniques (97140), therapeutic exercises (97110), therapeutic activities (97530), and massage (97124) from 03/14/05 through 07/08/05 were neither reasonable nor medically necessary.

Criteria utilized: the *AECOM Guidelines*, as well as the North American Spine Society Phase III *Clinical Guidelines For Multidisciplinary Healthcare Providers*.

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 Division 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 05/17/06 from the office of Professional Associates.

Sincerely,

Lisa Christian
Secretary/General Counsel