



## 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 Rd. Suite 101 Duncanville, Texas 75116	MDR Tracking No.: M5-06-1223-01
	Claim No.:
	Injured Employee's Name:
Respondent's Name and Address: American Home Assurance Company Rep Box # 19	Date of Injury:
	Employer's Name:
	Insurance Carrier's No.:

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

Requestor's Position Summary: Per the Table of Disputed Services "Documentation supports medical necessity."

Principle Documentation:

1. DWC-60/Table of Disputed Services
2. CMS 1500's
3. Explanation of Benefits

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

Respondent's Position Summary: "This is a fee dispute involving retrospective medical necessity. The carrier disputes that the provider has shown that the treatment underlying the charges was medically reasonable and necessary..."

Principle Documentation: Response to DWC-60

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

Date(s) of Service	CPT Code(s) or Description	Medically Necessary?	Additional Amount Due (if any)
07-18-05 to 08-12-05	97530-59 (46 units @ \$37.58 per unit)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	\$1,728.68
07-22-05, 07-28-05 and 08-12-05	97110-59 (3 units @ \$36.14 per unit)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	\$108.42
07-18-05 to 08-12-05	99215-25, 98940, 97140-59, 97116-59, 97112-59, E0745-RR, E1399-NU, 97035-59 and L0515-NU	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	\$0.00
TOTAL DUE			\$1,837.10

#### 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, 134.1 and 134.202  
Texas Labor Code, Sec. 413.031 and 413.011 (a-d)

**PART VII: DIVISION FINDINGS 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 \$1,837.10. In addition, 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 Respondent 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.

Order by:

08-30-06

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.**



**CompPartners Final Report** ACCREDITED EXTERNAL REVIEW

CompPartners Peer Review Network  
Physician Review Recommendation  
Prepared for TDI/DWC

**Claimant Name:**

**Texas IRO # :**

**MDR #:** M5-06-1223-01

**Social Security #:**

**Treating Provider:** Patrick Davis, DC

**Review:** Chart

**State:** TX

**Date Completed:** 8/10/06

**Review Data:**

- **Notification of IRO Assignment dated 6/21/06, 1 page.**
- **Receipt of Request dated 6/21/06, 1 page.**
- **Medical Dispute Resolution Request/Response dated 3/9/06, 1 page.**

- **Table of Disputed Services dated 8/12/05, 8/10/05, 8/8/05, 8/5/05, 8/3/05, 8/2/05, 7/28/05, 7/27/05, 7/25/05, 7/22/05, 7/20/05, 7/18/05, 8 pages.**
- **List of Treating Providers (date unspecified), 1 page.**
- **Legal Letter dated 6/28/06, 3/30/06, 3 pages.**
- **Provider Bill Audit Report dated 12/16/05, 12/8/05, 9 pages.**
- **Letter dated 8/12/05, 7/18/05, 6/27/05, 11 pages.**
- **Report of Medical Evaluation dated 8/12/05, 5 pages.**
- **Lumbar Rhizotomy Therapy Session dated 8/12/05, 8/10/05, 8/8/05, 8/5/05, 8/3/05, 8/2/05, 7/28/05, 7/27/05, 7/25/05, 7/22/05, 7/20/05, 7/18/05, 27 pages.**
- **Texas Workers' Compensation Work Status Report dated 8/4/05, 7/19/05, 2 pages.**
- **Prescription dated 7/15/05, 1 page.**
- **Procedure Note dated 7/12/05, 1 page.**
- **History and Physical Examination dated 1/24/05, 10 pages.**
- **EMG/NCS Report dated 10/28/04, 3 pages.**
- **Lumbar Spine MRI dated 10/4/04, 2 pages.**

**Reason for Assignment by TDI/DWC:** Determine the appropriateness of the previously denied request for:

1. 99215-Office visit.
2. 98940-Chiropractic manual treatment.
3. 97140-59-Manual therapy technique.
4. 97530-59-Therapeutic activity.
5. 97116-59-Gait training.
6. 97112-59-Neuromuscular re-education.
7. E0745-Neuromuscular stimulator.
8. E1399-DME.
9. 97035-Ultrasound.
10. L0515-LSO, flexible brace.
11. 97110-59-Therapeutic exercises.

Dates of service 7/18/05 - 8/12/05

**Determination: PARTIAL -**

1. **UPHELD** - 99215-Office visit.
2. **UPHELD** - 98940-Chiropractic manual treatment.
3. **UPHELD** - 97140-59-Manual therapy technique.
4. **REVERSED** - 97530-59-Therapeutic activity.
5. **UPHELD** - 97116-59-Gait training.
6. **UPHELD** - 97112-59-Neuromuscular re-education.
7. **UPHELD** - E0745-Neuromuscular stimulator.
8. **UPHELD** - E1399-DME.
9. **UPHELD** - 97035-Ultrasound.
10. **UPHELD** - L0515-LSO, flexible brace.
11. **REVERSED** - 97110-59-Therapeutic exercises.

**Rationale:**

**Patient's age:** 49 years

**Gender:** Male

**Date of Injury:** \_\_\_\_

**Mechanism of Injury:** While working for a car auction he was leaning out of the window of his work van while driving holding onto a battery charger/air compressor unit and experienced a tearing/popping sensation across his low back region.

**Diagnoses:** Displacement of lumbar intervertebral disc, thoracic or lumbosacral neuritis, other post surgical status and muscle weakness, post left lumbar facet rhizotomy at L3, L4, L5, S1 on 7/12/05, left L5 radiculopathy.

The patient presented for chiropractic treatments with Patrick Davis, D.C., on 8/27/04. An electromyogram (EMG) was performed on 11/7/04, with findings consistent with L5 radiculopathy on the left. An MRI, performed on 10/4/04, was positive for a 2-3mm bulge and mild facet hypertrophy at the L4-5 level, mild left foraminal narrowing was noted, and a 1-2mm bulge with some mild bilateral facet hypertrophy and foraminal narrowing were noted at the L5-S1 level. The orthopedic report, dated 1/24/05, by Ralph Renshaw, M.D., noted during lumbar range of motion testing that the patient restricted himself to 20% of normal. Thereafter, he picked up his shoes and socks from the floor and bent all the way over for them. He could also sit in a chair. Deep tendon reflexes were 1+ at the knees and absent at the ankles, and sensation was decreased in the lateral and posterior calf on the left, and to a mild degree into the foot. Muscle testing was normal. Waddell's testing was positive in 6 out of 8 criteria, which was significant for symptom magnification. He found that no further physical therapy, chiropractic care or occupational therapy would be necessary, however, he felt that facet joint or foraminal injections might be beneficial. Dr. Renshaw felt that he could return to light to medium duty, did not require further diagnostic interventions and that he was definitely not a surgical candidate. Moreover, he did not require work conditioning, work hardening programs or pain management. Dr. Renshaw also advised that he should be weaned off of pain medication.

The claimant had a left lumbar facet rhizotomy at L3, L4, L5 and S1 performed on 7/12/05, from which he claimed complications of lumbosacral weakness and sensory deficits. There was no clarification of the dermatomal distribution of the sensory deficits, grading of muscular spasms nor grading of muscle weakness.

There was a prescription dated 7/15/05 from Charles Willis, MD, who performed the rhizotomy on 7/12/05 and prescribed physical therapy, three times a week for four to five weeks. An impairment rating was given of 10% whole person for the lumbar spine, per the DRE model AMA 4th Edition. The patient was determined to be capable of returning to full duty work, as of 8/8/05, according to the Texas work status report of 8/4/05.

The current request is to determine the medical necessity for the dates of service from 7/18/05 to 8/12/05 with the following items in dispute:

1) 99215-Office visit/exam on 7/18/05, 8/12/05. The medical necessity for this level of examination/office visit was simply not documented in the data submitted for review. The code level 99215 would indicate that the patient presented with a problem of moderate to high complexity, for which a comprehensive history, a comprehensive examination and complex clinical decision-making would have been necessary. This is just not the case with the evidence documented from this provider. These notes were redundant from date to date except for a few comments, which did not reflect any new problems, any additional history, any new findings on the physical examination, nor require complex decision-making. Accordingly, the fees as submitted hereunder are disproportionate to the complexity (or lack thereof) of the corresponding chiropractic issues at hand. Code 99211 would have conformed more appropriately with the services which were medically necessary corresponding to these two dates of service. Therefore, the code 99215 in question is not appropriate, for dates of service of 7/18/05 and 8/12/05. The foregoing determination was based upon the ChiroCode DeskBook, 10th Edition, section C, page 17. The patient presented for rehabilitation post-rhizotomy on 7/18/05 and discharged on 8/12/05. The fees submitted for these two examinations should have been submitted at the lesser code charges.

2) 98940 and 98940-59-Chiropractic manipulation/manual treatment on 7/18/05, 7/20/05, 7/22/05, 7/25/06, 7/27/05, 7/28/05, 8/2/05, 8/3/05, 8/5/05, 8/8/05, 8/10/05, and 8/12/05. There was no subluxation nor fixation documented in any of the provider's progress notes corresponding the dates referenced in the foregoing. Accordingly, there was no evidence that manipulation/manual treatments of the spine in one to two regions was medically necessary on the dates in question. Moreover, there are no high grade peer-reviewed outcome-based studies which support the efficacy of chiropractic manipulation following rhizotomy. Therefore, the manipulation corresponding to the dates in question hereunder were not medically necessary. This determination would be supported by the Texas Department of Insurance Rules and Regulations.

3) 97140-59-Manual therapy technique on 7/18/05, 7/20/05, 7/22/05, 7/25/05, 7/27/05, 7/28/05, 8/2/05, 8/3/05, 8/5/05, 8/8/05, 8/10/05, 8/12/05 are not recommended because manual therapy cannot be charged on the same date of a manipulation to the same area, per the Blue Cross Blue Shield Physical Medicine Treatment Guidelines. Moreover, manual therapy would not be medically necessary post-rhizotomy. Therefore, the previously denied manual therapy corresponding to the dates in question hereunder should be upheld.

4) 97530-59-Therapeutic activity on 7/18/05 with 4 units, 7/20/05 with 4 units, 7/22/05 with 4 units, 7/25/05 with 4 units, 7/27/05 with 1 unit, 7/28/05 with 4 units, 8/2/05 with 5 units, 8/3/05 with 4 units, 8/5/05 with 4 units, 8/8/05 with 4 units, 8/10/05 with 4 units, 8/12/05 with 4 units. The medical necessity for these dates of service was established as a post-rhizotomy rehabilitation program for the lumbar spine, to help relieve the effects of this injury and procedure. This would be supported by the Texas Department of Insurance Rules and Regulations as well as by the Blue Cross Blue Shield Physical Medicine Treatment Guidelines.

- 5) 97116-59-Gait training, on 7/18/05, 7/22/05, 7/25/05, 7/27/05, 7/28/05, 8/2/05, 8/5/05, 8/8/05, 8/12/05 was not medically necessary because the clinical daily notes on these dates of service did not document any deficit with regard to this patient's gait. This would be supported by the Blue Cross Blue Shield Treatment Guidelines.
- 6) 97112-59 Neuromuscular re-education on 7/18/05, 7/20/05, 7/25/05, 7/27/05, 7/28/05, 8/2/05, 8/3/05, 8/5/05, 8/8/05, 8/10/05. The medical re-education on these dates of service was not found due to lack of appropriate documentation to support such services on these dates. This determination would be supported by the Blue Cross Blue Shield Physical Medicine Treatment Guidelines.
- 7) E0745-Neuromuscular stimulator rental on 7/18/05 and 8/12/05. The medical necessity for this unit was not found. This unit has not been found efficacious with regard to low back complaints. The Blue Cross Guidelines regarding neuromuscular stimulation consider such interventions to be investigational and, therefore, not medically necessary. Based thereon, the previous denial of the neuromuscular stimulator rental must be upheld.
- 8) E1399-DME (electrode pads for EMS unit) on 7/18/05 with 2 units, 8/12/05 with 2 units. The medical necessity for the additional electrode pads in question cannot be established, based upon the fact that the neuromuscular stimulator rental was not found to be medically necessary. The Blue Cross Guidelines regarding neuromuscular stimulation would support the basis for this determination.
- 9) 97035-Ultrasound on 7/20/05, 8/3/05, and 8/10/05. The medical necessity for this service was not found. Passive treatment interventions, including ultrasound, are not supported by the ACOEM Guidelines, 2<sup>nd</sup> Edition beyond the first six weeks of symptoms. Moreover, isolated interventions which are not a part of a multidisciplinary program, in the management of cases of chronicity, tend to be not efficacious. Given that the dates during which ultrasound was rendered exceeded the stated six week window and the data submitted for review did not document any multidisciplinary program, the ultrasound rendered on the dates in question does not meet the tests for medical necessity, as defined by chapters 6 and 12 of the ACOEM Guidelines, 2<sup>nd</sup> Edition.
- 10) L0515-LSO, flexible on 7/20/05. The ACOEM Guidelines, Chapter 12 set out that lumbar supports have not been shown to have any lasting benefit beyond the acute phase of symptom relief. Inasmuch as the brace in question was provided more than ten (10) months after this patient's injuries were sustained, it was provided well beyond the acute phase of his constellation of symptoms. Accordingly, the brace does not meet the test for medical necessity, as defined by chapter 12 of the ACOEM Guidelines, 2<sup>nd</sup> Edition.
- 11) 97110-59 Therapeutic exercises on 7/22/05, 7/28/05, 8/12/05. The medical necessity for post- rhizotomy rehabilitation was found to help increase function and relieve the effects of the injury as well as of the rhizotomy. The therapeutic exercises in question would be supported by both the Blue Cross Blue Shield Physical Medicine Treatment Guidelines as well as by the ACOEM Guidelines, 2<sup>nd</sup> Edition, Chapter 6.

- Criteria/Guidelines utilized:**
- 1) ACOEM Guidelines, 2<sup>nd</sup> Edition, Chapters 6 and 12.
  - 2) Texas Department of Insurance and DWC rules and regulations. Texas Labor Code 408.021 and specific commission rule TWCC 134.1001 (C) (1) (A) states: 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 injured worker to return to or retain employment.
  - 3) The Blue Cross Guidelines regarding Neuromuscular Stimulation.
  - 4) The Blue Cross Blue Shield Physical Medicine Treatment Guidelines.
  - 5) ChiroCode DeskBook, 10th Edition, regarding coding changes for Evaluation and Management charges and office visits.

**Physician Reviewers Specialty:** Chiropractor

**Physician Reviewers Qualifications:** Texas Licensed DC, BSRT, FIAMA Chiropractor and is also currently listed on the TDI/DWC ADL list.

**CompPartners, Inc. hereby certifies that the reviewing physician or provider has certified that no known conflicts of interest exist 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 the decision before the referral to CompPartners, Inc.**

## 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.

In accordance with Division Rule 102.4(h), I hereby verify that a copy of this Independent Review Organization (IRO) Decision was sent to the carrier, requestor, claimant and the Division via facsimile or U.S. Postal Service from the office of the IRO on this day of August 10, 2006

Signature of IRO Employee:

Printed Name of IRO Employee    Lee-Anne Strang