



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: SCD Back and Joint Clinic, Ltd. 200 E. 24 <sup>th</sup> Street, Suite B Bryan, Texas 77803	MDR Tracking No.: M5-06-1513-01
	Claim No.:
	Injured Employee's Name:
Respondent's Name and Address: Liberty Mutual Fire Insurance Rep Box # 28	Date of Injury:
	Employer's Name: _____ Company
	Insurance Carrier's No.: 949790928

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

Requestor's Position Summary: "The carrier denied payment for certain medical services provided to the above captioned patient. It is our position that these services were reasonable, necessary and related to the compensable injury. Appeals and follow up with the carrier have failed to resolve the dispute."

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: "We base our payments on the Texas Fee Guidelines and the Texas Workers' Compensation Commission Acts and Rules."

Principle Documentation:

1. 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)
04-28-05, 04-29-05 and 05-02-05	99211-25 (\$23.35 X 3 DOS)	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	\$70.05
05-10-05	99211 (\$23.35 X 1 DOS)	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	\$23.35
04-28-05, 04-29-05 and 05-10-05	97530 (1 unit @ \$34.30 X 4 = \$137.20 X 3 DOS)	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	\$411.60
05-02-05, 05-03-05, 05-04-05, 05-05-05, 05-06-05 and 05-09-05	97530 (1 unit @ \$34.30 X 5 = \$171.50 X 6 DOS)	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	\$1029.00
04-28-05, 05-03-05, 05-04-05, 05-05-05, 05-09-05 and 05-10-05	97112 (1 unit @ \$34.30 X 2 = \$68.60 X 6 DOS)	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	\$411.60

Date(s) of Service	CPT Code(s) or Description	Medically Necessary?	Additional Amount Due (if any)
04-29-05 and 05-02-05	97112 (1 unit @ \$34.30 X 2 DOS)	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	\$68.60
05-06-05	97112 (1 unit @ \$34.30 X 3 = \$102.90 X 1 DOS)	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	\$102.90
04-28-05 to 05-10-05	97124 (1 unit @ \$25.69 X 9 DOS)	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	\$231.21
04-28-05 to 05-10-05	G0283 (1 unit @ \$13.61 X 9 DOS)	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	\$122.49
04-29-05, 05-03-05, 05-04-05 and 05-05-05	97012 (1 unit @ \$17.20 X 4 DOS)	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	\$68.80
04-29-05 to 05-10-05	97039 (1 unit @ \$14.15 X 8 DOS)	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	\$113.20
04-29-05, 05-02-05 and 05-05-05	98940 (1 unit @ \$30.13 X 3 DOS)	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	\$90.39
04-29-05, 05-02-05 and 05-09-05	98943 (1 unit @ \$27.97 X 3 DOS)	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	\$83.91
05-12-05	99212	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	\$41.91
05-13-05 to 08-16-05	99212, 97530, 97112, 99211-25, 97039, G0283, 97124, 98943, 99212-25, 97012, 98940, A9150, 99211, 95851	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	\$0.00
<b>TOTAL DUE</b>			\$2,869.01

**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.

The Requestor submitted an updated Table of Disputed Services to Medical Dispute Resolution on 05-24-06 and the updated table is used for the review.

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

CPT code 95851 billed for date of service 06-09-05 was denied by the Respondent with denial code "V" (based on peer review, further treatment is not recommended). The Respondent's response to the DWC 60 stated that CPT code 95851 was incidental to CPT code 97750 also billed on 06-09-05. Per Rule 134.202 CPT code 95851 is a component procedure of CPT code 97750. At no time is a modifier appropriate. The services represented by the combination of codes is not paid separately. No reimbursement is recommended.

**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 \$2,869.01. 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:

10-13-06

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

#### **IRO Medical Dispute Resolution M5 Retrospective Medical Necessity IRO Decision Notification Letter**

<b>Date:</b>	<b>06/30/2006 Amended 10/10/2006</b>
<b>Injured Employee:</b>	
<b>MDR #:</b>	<b>M5-06-1513-01</b>
<b>DWC #:</b>	
<b>MCMC Certification #:</b>	<b>TDI IRO-5294</b>

#### **REQUESTED SERVICES:**

Please review the item(s) in dispute: 97530-therapeutic activities, G0283-electrical stimulation A9150-Biofreeze, 97750 muscle testing, 98940, 98943-chiropractic manual treatment, 99211, 99211-25, 99212-25 office visits, 97112-neuromuscular re-education, 97124-massage, 97039-cold laser, 97012-mechanical traction denied for medical necessity.

Dates of service (DOS): 04/28/2005-08/16/2005

#### **DECISION: **Partial****

IRO MCMCIIc (MCMC) has been certified by the Texas Department of Insurance as an Independent Review Organization (IRO) to render a recommendation regarding the medical necessity of the above disputed service.

**Please be advised that a MCMC Physician Advisor has determined that your request for an M5 Retrospective Medical Dispute Resolution on 06/30/2006, concerning the medical necessity of the above referenced requested service, hereby finds the following:**

The medical necessity for the course of care listed above in regards to treatment of the right shoulder post-operatively from 04/28/2005 – 05/12/2005 is established. The medical necessity for treatment beyond 05/12/2005 as represented in the documentation is not established. The medical necessity for care and treatment of low back pain during the dates of service in dispute is not established.

**CLINICAL HISTORY:**

Records reflect that the above captioned individual, a 26-year-old male, sustained injuries as a result of occupational incident. The history reveals that he was using a chain saw for the purpose of trimming trees and during the course of his normal duties reports an incident in which he felt a pop in his right shoulder. The injured individual initiated care under the administration of the attending physician (AP) in May of 2004. Other areas of complaints and treatment include mid back and low back. An extensive and protracted course of care was attended. MRI examination of the thoracic and lumbar spines as well as the right shoulder dated 06/17/2004 revealed small disc protrusions in the thoracic spine at T6-8, disc bulges in the lumbar spine from L2-S1 and tendinosis of the right shoulder at the supraspinatus tendon. The injured individual underwent surgery to the injured shoulder on 03/10/2005 to correct a SLAP lesion. A post-operative rehabilitation (rehab) assessment was performed on 03/31/2005. The records reflect that post-surgical rehab was initiated on 04/12/2005 and consisted of daily extensive passive and active care, which continued through 08/16/2005. At the conclusion of the post-surgical rehab, a chronic pain management program was attended.

**REFERENCES:**

ACOEM Guidelines Second Edition. American College of Occupational and Environmental Medicine.

Texas Medical Fee Guidelines.

**RATIONALE:**

It should be noted that prior to surgery on 03/10/2005, the injured individual had already undergone an extensive course of chiropractic management to include passive and active care. A course of post-surgical rehabilitation (rehab) to the right shoulder would be established as medically necessary and consistent with standards of care and practice within pertinent disciplines. The course of care from 04/12/2005 through 05/12/2005 represented in the documentation would be consistent with generally accepted standards of care and practice including the ACOEM guidelines and official disability guidelines. This is especially true in this particular case given the fact that the injured individual was attending daily and extensive rehab post-surgically. Given the injured individual's age, the fact that the documentation does not reveal any significant complicating factors or comorbidities, and given the extensive course of care attended prior to surgery, care through 05/12/2005 represents a more than adequate course of care and further care would be reasonably expected to affect adequate progress so that a transition to home therapy and modified return to work could be considered.

Furthermore, the documentation reveals equivocal progress during the initial course of care from 04/12/2005 through 05/12/2005. Objective comparative data was noted to have been improved during this course of care however it is not completely clear if this progress is in excess of what would be reasonably expected from the natural history of the injured individual's condition post-operatively. Subjective pain levels however, did not improve and in fact were generally increased throughout this same course of care. In fact, there is no evidence within the documentation that subjective pain levels were ever clearly decreased.

Lastly, at least one prior functional testing exam revealed submaximal and/or inconsistent efforts. The documentation does not indicate that these particular issues were ever addressed. The documentation further does not indicate if these issues of submaximal and inconsistent effort ever affected the application of the ongoing treatment plan.

In summary, during the dates of dispute in question, the medical necessity for any care to the low back is not established given the extensive course of care attended prior to surgery. The course of care from 04/28/2005 through 05/12/2005 and represented in the documentation as post-operative rehab is established. This includes the entities listed above. The medical necessity for care beyond 05/12/2005 is not established.

**RECORDS REVIEWED:**

Notification of IRO Assignment dated 05/26/06

MR-117 dated 05/26/06

DWC-60

DWC-22: Required Medical Examination Notice or Request for Order with Dates of Injury 12/03/04, 05/18/04

DWC-32: Request for Designated Doctor dated 09/19/05, 01/11/05, 12/16/04

EES-14 dated 10/06/05 (three letters) and two dated 01/25/05

DWC-45 dated 06/09/04

DWC-61: Initial Medical Report dated 01/17/05

DWC-69: Reports of Medical Evaluation dated 11/04/05, 02/17/05

DWC-73: Work Status Reports dated 05/25/04 through 07/26/05

MCMC: IRO Medical Dispute Resolution M5 Retrospective Medical Necessity dated 06/06/06

MCMC: IRO Acknowledgment and Invoice Notification Letter dated 06/01/06

MCMC: Statement dated 06/01/06

Liberty Mutual: Letters dated 06/07/06, 04/26/06 from Sandy Adamson, Medical Dispute Dept.

The Back & Joint Clinic: Letter dated 06/02/06 from John Wyatt, D.C.

U.S. Postal Service: Certified Mail Receipt postmarked 11/01/05 with PS Form 3811 dated 11/29/05

The Physicians Centre: Itemized Bill dated 03/13/05  
Texas Department of Insurance: Narrative History dated 10/26/05, 02/10/05 from Daniel Thompson, III, M.D.  
Professional Reviews, Inc.: Billing Retrospective Review dated 09/21/05 from Thomas Sato, D.C.  
Shanti Pain & Wellness Clinic: Outpatient Rehabilitation Therapy notes dated 08/25/05, 08/19/05, 08/18/05, 08/16/05  
Shanti Pain & Wellness Clinic: Progress Notes, Medical Management dated 08/19/05, 08/18/05, 08/16/05  
Shanti Pain & Wellness Clinic: Outpatient Progress Notes dated 08/19/05, 08/18/05, 08/16/05  
Shanti Pain & Wellness Clinic: Progress Notes dated 08/16/05 through 10/28/05  
Liberty Mutual: Explanation of Benefits dated 08/03/05, 07/21/05, 07/08/05, 06/09/05  
The Back & Joint Clinic: Chronic Pain Management Program Evaluation dated 07/26/05 from John Wyatt, D.C.  
Central Texas Sports Medicine and Orthopedics: Prescription note from B. Rick Seabolt, M.D. dated 07/21/05  
Shanti Pain & Wellness Clinic: Evaluation dated 06/28/05 from Issan Shanti, M.D.  
The Back & Joint Clinic: Pain Medication Evaluation dated 06/20/05 from John Wyatt, D.C.  
Professional Reviews, Inc.: Reconsideration dated 06/03/05 from Thomas Sato, D.C.  
Liberty Mutual: Fax cover sheet with memo dated 05/25/05  
The Back & Joint Clinic: Subsequent Medical Narrative Reports – Amended dated 03/31/05, 09/28/04 from John Wyatt, D.C.  
MSO: Letter of Medical Necessity dated 03/24/05  
The Physicians Centre: Operative Report dated 03/10/05 from Brian Seabolt, M.D.  
The Physicians Centre: History and Physical from Brian Seabolt, M.D. dated 03/10/05  
The Physicians Centre: Pre Anesthesia Evaluation dated 03/10/05  
Patient Information sheet dated 03/10/05  
Comprehensive Healthcare Associates: Individual/Relaxation Session notes (handwritten) dated 02/17/05, 02/04/05, 01/31/05  
Slough, Susan: Memo dated 02/02/05  
Shanti Pain & Wellness clinic: Handwritten follow up assessment notes dated 01/24/05, 07/26/05  
Todd A. Maraist, M.D.: Shoulder arthrogram dated 01/17/05  
Radiology Associates: MRI right shoulder (Final Report) dated 01/17/05  
Comprehensive Healthcare Associates: Psychosocial Evaluation dated 01/10/05 from Barbara Bryant, MA  
Health Insurance Claim Form dated 11/29/04  
Central Texas Sports Medicine & Orthopedics: Office notes dated 11/22/04 through 09/07/05 from B. Rick Seabolt, M.D.  
Back & Joint Clinic: Exercise Grids for the period 06/09/04 through 07/20/05  
LSI International: Information for Biofreeze 4 ox Tube prescribed 11/15/04, 07/08/05, 06/03/05, 05/25/04  
The Back & Joint Clinic: Exercise Rehabilitation Documentation notes dated 11/15/04 through 07/12/05  
The Back & Joint Clinic: Orthopedic Evaluation from John Wyatt, D.C.  
Diagnostic Imaging Institute, Inc.: Oswestry Low Back Pain Disability Questionnaire, Neck Disability Index, McGill Pain Questionnaire, Dallas Pain Questionnaire dated 10/28/04  
Hugh W. Ratliff, M.D.: Required Medical Examination dated 10/26/04  
Diagnostic Imaging Institute, Inc.: Functional Abilities Evaluation dated 10/26/04  
Professional Reviews, Inc.: Chiropractic Modality Review dated 10/20/04 from Thomas Sato, D.C.  
Facticon Inc.: Investigative Report dated 10/18/04 (page 1 only)  
Back and Joint Clinic: Progressive Resistance Exercise Charts dated 10/06/04 through 07/20/05  
Back and Joint Clinic: Special Testing – Critical Job Demand Testing dated 10/04/04 through 07/13/05  
Back and Joint Clinic: Muscle Strength Testing – DeLorme Testing dated 10/04/04 through 06/27/05  
The Back & Joint Clinic: Right Shoulder Range of Motion Assessment Report dated 06/09/05, Right Shoulder Range of Motion Assessment Report dated 05/12/05, Right Shoulder Range of Motion Assessment Report dated 03/31/05, Thoracic Range of Motion Assessment Report dated 09/29/04, Lumbar Range of Motion Assessment Report, Right Shoulder Range of Motion Assessment Report dated 09/28/04, Thoracic Range of Motion Assessment Report, Right Shoulder Range of Motion Assessment Report, Lumbar Range of Motion Assessment Report dated 09/09/04  
Southwest Medical Examiners: Letter dated 09/23/04  
CMO Incorporated: Information on The Thrifty Belt prescribed 09/16/04  
Facticon Inc.: Letters dated 09/15/04, 12/08/04 from Joseph Buck, Accounts Receivable Manager with attached invoices  
Back and Joint Clinic: Therapeutic Activities & Neuromuscular Reduction Charts dated 09/15/04 through 11/15/04  
Back and Joint Clinic: Treatment Plans dated 09/14/04, 06/07/04  
The Back & Joint Clinic: Subsequent Medical Narrative Reports dated 09/09/04 through 07/22/05 from John Wyatt, D.C.  
Returned Check notice dated 09/03/04  
Asplyndh Tree Expert Co.: List of payments with checks issued 08/20/04, 06/07/04, 06/04/04  
Facticon Inc.: Investigative Report dated 08/13/04  
The Suchowiecky Center: Outpatient Progress Notes (handwritten) dated 07/29/04, 07/28/04, 07/14/04, 06/22/04, 06/16/04  
Brazos Valley Open MRI: MRI right shoulder, MRI sacrum dated 06/18/04, MRI lumbar spine, MRI thoracic spine dated 06/17/04  
LSI: Information on LSI Silver Self-Adhesive Electrodes prescribed 06/11/04  
Back and Joint Clinic: Therapeutic Procedures Charts dated 06/11/04, 06/09/04, 06/07/04  
The Back & Joint Clinic: Affidavit of Mailing dated 06/08/04  
Liberty Mutual: Check remittance statements dated 06/07/04, 06/04/04  
Patient information sheet dated 06/04/04  
The Suchowiecky Center: Initial Assessment/Physical Examination dated 06/01/04 from Ronald Kahn, M.D.

Risk Management Department: Form letter from Trudie DiRuggeris dated 06/01/04  
Liberty Mutual: Certificates of Service for the period 05/25/04 through 10/14/05  
Back & Joint Clinic: Patient Office Visit Reports dated 05/25/04 through 11/04/05  
The Back & Joint Clinic: Initial Medical Narrative Report from John Wyatt, D.C. dated 05/25/04  
Mid-Lands Chemical Company: Information on Flexible Polar Packs prescribed 05/25/04  
Undated IRO Submission Appendix A through F  
Undated ISO Claim Service Summary  
Undated handwritten note from Greg Perry  
Undated note from Daniel Thompson, III, M.D. regarding new mailing address

**The reviewing provider is a **Licensed/Boarded Chiropractor** and certifies that no known conflict of interest exists between the reviewing Chiropractor 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 prior to referral to the IRO. The reviewing physician is on DWC's Approved Doctor List.**

**This decision by MCMC is deemed to be a Division decision and order (133.308(p) (5)).**

### **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 via facsimile to the office of DWC on this**

**\_\_10<sup>th</sup>\_\_ day of      **October**      **2006.****

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

**Printed Name of IRO Employee:** \_\_\_\_\_

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