



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 Dispute

#### PART I: GENERAL INFORMATION

<b>Type of Requestor:</b> ( X ) Health Care Provider ( ) Injured Employee ( ) Insurance Carrier	
Requestor's Name and Address: Dr. Gabriel Gutierrez P O BOX 229 Katy, Texas 77492-0229	MDR Tracking No.: M5-06-1559-01
	Claim No.:
	Injured Employee's Name:
Respondent's Name and Address: Zurich American Insurance Company Rep Box # 19	Date of Injury:
	Employer's Name:
	Insurance Carrier's No.:

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

DOCUMENTATION SUBMITTED: DWC-60 package  
 POSITION SUMMARY: Per the Table of Disputed Services "Treatment provided to Mr. \_\_\_ is reasonable and necessary per Texas Labor Code 408.21 (a). Please refer to supportive documentation".

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

No response received from the Respondent

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

Date(s) of Service	CPT Code(s) or Description	Medically Necessary?	Additional Amount Due (if any)
11-04-05 to 11-14-05	97116 and 97035	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	\$0.00
05-05-05 to 06-24-05	90801 (see note below)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	\$150.00
	97750-FC (see note below)		\$603.00
	97545-WH-CA (2 units @ \$128.00 X 30 DOS)		\$3,840.00
	97546-WH-CA (6 units @ \$384.00 X 30 DOS)		\$11,520.00
	Note: Amount recommended for reimbursement is the amount listed in dispute on the Table of Disputed Services, although it is less than the MAR		
	<b>TOTAL</b>		\$16,113.00

#### 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 **prevailed** on the **majority** of the disputed medical necessity issues.

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

28 Texas Administrative Code Sec. 133.308 and 134.202

**PART VII: DIVISION DECISION 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 \$16,113.00. In addition, the Division finds that the requestor was the prevailing party and is entitled to a refund of the IRO fee (\$460.00). 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 by:

06-19-06

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Typed Name

\_\_\_\_\_  
Date of Findings and Decision

Order by:

06-19-06

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



# IMED, INC.

1819 Firman • Suite 143 • Richardson, Texas 75081  
Office 972-381-9282 • Toll Free 1-877-333-7374 • Fax 972-250-4584  
e-mail: imeddallas@msn.com

---

## NOTICE OF INDEPENDENT REVIEW

**NAME OF EMPLOYEE:** \_\_\_\_\_  
**IRO TRACKING NUMBER:** M5-06-1559-01  
**NAME OF REQUESTOR:** Gabriel R. Gutierrez, D.C.  
**NAME OF CARRIER:** Zurich American/Flahive-Ogden-Latson  
**DATE OF REPORT:** 05/31/06  
**DATE OF AMMENDED REPORT:** 06/09/06  
**IRO CERTIFICATE NUMBER:** 5320

### TRANSMITTED VIA FAX TO:

IMED, Inc. has been certified by the Texas Department of Insurance (TDI) as an independent review organization (IRO).

In accordance with the requirement for TDI to randomly assign cases to IROs, TDI has assigned your case to IMED, Inc. for an independent review. The peer reviewer selected has performed an independent review of the proposed care to determine if the adverse determination was appropriate. In performing this review, the peer reviewer 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.

The independent review was performed by a matched peer with the treating physician. This case was reviewed by a chiropractic physician reviewer who is a Doctor of Chiropractic Medicine and is currently listed on the DWC approved doctor list.

I am the Secretary and General Counsel of IMED, Inc., 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 and the provider, the injured employee, 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. I further certify that no conflicts of interest of any nature exist between any of the aforementioned parties and any director, officer, or employee of IMED, Inc.

## REVIEWER REPORT

I have reviewed the records forwarded on the above injured worker and have answered the questions submitted.

### Information Provided for Review:

- Thirty-six pages of documentation.
- 05/18/06 - Notification of IRO assignment.
- 05/22/06 – Requestors rationale for increased reimbursement.
- 04/27/06 – Medical dispute resolution request response.
- Table of disputed services.
- 01/10/05 – Initial evaluation from Total Rehab Institute, P.A.
- 01/14/05 – Initial evaluation, Ana Ruiz Allison, M.D.
- 02/03/05 – Imaging report from K. Francis Lee, M.D.
- 02/09/05 – Follow-up evaluation with Juan C. Galvan, D.C.
- 02/11/05 – MRI of the lumbar spine without contrast interpreted by Mario E. Bertoni, M.D.
- 02/11/05 – MRI of the thoracic spine without contrast interpreted by Mario E. Bertoni, M.D.
- 02/23/05 – Clinical follow-up with Juan C. Galvan, D.C.

- 03/03/05 – A peer review performed by H. Bryan Lee, D.C.
- 03/11/05 – Electrodiagnostic evaluation, Jeffrey Hamilton, D.C.
- 05/05/05 – Work hardening assessment psychosocial history, Monie Smith M.A., LMFT.
- 05/06/05 – Vocational assessment report, Phillip W. Roddy, M.S., CRC.
- 05/13/05 Thru 06/16/05 – Thirty-one pages of documentation from the work hardening program.
- 06/17/05 – Designated Doctor Evaluation, Ahmed Khalifa, M.D.
- 06/24/05 – Discharge report from work hardening.
- 04/10/06 – Peer review from Simon Forster, D.C.
- 05/09/06 – Case overview from Gabriel Gutierrez, D.C.

### **Clinical History Summarized:**

The employee was injured at work on \_\_\_ while lifting 120 slips.

The injured employee presented for chiropractic treatment on 01/10/05 with Juan Galvan, D.C., with a chief complaint of sharp low back pain, bilateral leg numbness, and pain increased with sitting, laying, bending, coughing, and sneezing. The employee was diagnosed with acute lumbar sprain/strain, acute thoracic sprain/strain, lumbar radiculitis, and rule out lumbar disc herniation. Recommendations and treatment plan included request for thoracic and lumbar x-rays, pain management, computerized range of motion and muscle strength evaluation, at-home EMS machine, biofreeze, and a lumbosacral support belt.

On 01/14/05, the employee was evaluated by Ana Ruiz Allison, M.D., whose report somewhat contradicted the report of Dr. Galvan on 01/10/05. Dr. Allison's report indicated the employee experience low back pain radiating to his mid back, left scapula, and shoulder area. The employee reported he experienced pain when lifting his left arm and shoulder, but reported "no complaint in the lower extremity, no tingling, and no weakness". It was also reported by Dr. Allison that the employee had a negative straight leg raise, good strength, and normal gait. These findings were also inconsistent with those reported previously and subsequently by Dr. Galvan.

On 02/03/05, x-rays of the thoracic spine were interpreted as normal, while x-rays of the lumbar spine revealed a congenital abnormality of lumbarization of S1 or possibly sacralization of L5.

On 02/09/05, a follow-up evaluation with Dr. Galvan again indicated some inconsistencies in reporting. Under a subheading of Chief Complaint, Dr. Galvan stated the employee was also reporting continued numbness in both legs. In the next paragraph entitled History of Present Illness, Dr. Galvan reported, "However, the numbness in the legs is now only in the left leg". Dr. Galvan also reported that the employee's gait was somewhat slow and had a positive straight leg raise bilaterally. This is inconsistent with the findings on 01/14/05 of Dr. Allison.

On 02/11/05, an MRI of the lumbar spine was interpreted to reveal loss of hydration at L3-L4 and posterior subligamentous bulges at L3-L4 and L4-L5, as well as intra-facet fluid in the left facet joint and L4-L5 vertebral body.

On 02/11/05, an MRI of the thoracic spine was interpreted to be within normal limits.

On 02/23/05, there was a clinical follow-up with Dr. Galvan. It should be noted that this report stated the "patient's gait is within normal limits".

On 03/11/05, an electrodiagnostic studies was reported to be negative for lumbar radiculopathy, peripheral neuropathy, or motor neuron disease.

On 05/05/05, a work hardening assessment psychosocial history was performed, and a recommendation was made for a work hardening program.

On 05/06/05, a vocational assessment report also indicated the necessity of a work hardening program.

On 05/13/05, the employee began a work hardening program which extended from that date to 06/24/05. On 05/13/05, a work hardening report indicated the employee's ability to lift 25 pounds occasionally, 12.5 pounds frequently, and 5 pounds constantly with

a functional capacity level of light. On 06/24/05, a discharge work hardening report indicated that the employee had the ability to lift 100 pounds occasionally, 50 pounds frequently, and 20 pounds constantly with a functional capacity level of heavy.

### **Disputed Services:**

Psychiatric diagnostic interview examination (90801), work hardening (97545-WH-CA), work hardening each additional hour (97546-WH-CA), Functional Capacity Evaluation (97750-FC), gait training (97116), and ultrasound (97035). Date of service 05/05/05 through 11/14/05.

### **Decision: 2 parts**

On the basis of the documentation provided, a psychiatric diagnostic interview examination (90801), Functional Capacity Evaluation (97705-FC), work hardening (97545-WH-CA) and work hardening each additional hour (97546-WH-CA) were reasonable and necessary.

Gait training (97116) and ultrasound (97035) were not medically necessary.

### **Rationale/Basis for Decision:**

On the basis of the documentation provided, the psychiatric diagnostic interview examination (90801), Functional Capacity Evaluation (97750-FC), work hardening (97545-WH-CA) and work hardening each additional hour (97546-WC-CA) would be considered medically necessary to the injury of . The necessity of the psychiatric interview, Functional Capacity Evaluation and work hardening program were demonstrated by the Functional Capacity demand of the claimant's occupation established is heavy, and the claimant's pre-work hardening functional capacity level was established at light.

It was demonstrated through the work hardening program that the claimant was able to obtain a heavy physical demand level and was returned to preinjury employment.

The Functional Capacity Evaluation and psychiatric interview were medically necessary at the beginning of the work hardening program to establish a baseline for the claimant's mental and physical conditioning prior to the work hardening program, and a Functional Capacity Evaluation would be appropriate at the end of the work hardening program to assess the claimant's return to work capabilities.

Gait training (97116) was not medically necessary based upon the documentation provided. Although there was some discrepancy through the documentation, on initial evaluation on 01/14/05, Ana Ruiz Allison, M.D., reported that the claimant's gait was normal, and I found substantial documentation that the claimant was not having gait difficulties as a result of the work injury of 01/02/05.

Also, ultrasound (97035) was not medically necessary as the established goals of the treatment plan for 05/05/05 through 11/14/05 were to "address stamina, endurance, and strengthening". Passive physical therapy modalities such as ultrasound would not be utilized to address these particular treatment goals, and therefore, in my opinion is not medically necessary.

The rationale for the opinion stated in this report is based on the record review, as well as the broadly accepted literature to include 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 with IMED, Inc. is deemed to be a DWC decision and order.

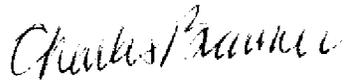
### **YOUR RIGHT TO REQUEST A HEARING**

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, 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 thirty (30) days after the date on which the decision that is the subject of the appeal is final and appealable.

I hereby verify that a copy of this Independent Review Organization's decision was sent to the DWC via facsimile this 2<sup>nd</sup> day of June, 2006 from the office of IMED, Inc.

Sincerely,

A handwritten signature in black ink that reads "Charles Brawner". The signature is written in a cursive style with a large initial "C".

Charles Brawner  
Secretary/General Counsel