



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	
Requestors Name and Address: Rogelio Rodriguez, D.C. 4602 Washington Avenue Suite A Houston, Texas 77007	MDR Tracking No.: M5-06-1598-01
	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

DOCUMENTATION SUBMITTED: DWC-60

POSITION SUMMARY: Per the Table of Disputed Services "Treatment medically necessary for extent of injury (as per medical documentation, post-injection & Diagnostics) Tx. Labor Code/Sect. 408.021".

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

DOCUMENTATION SUBMITTED: Response to DWC-60

POSITION SUMMARY: Per the Table of Disputed Services "unnecessary medical".

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

Date(s) of Service	CPT Code(s) or Description	Medically Necessary?	Additional Amount Due (if any)
05-02-05 to 07-08-05	97110 (5 units @ \$179.30 X 9 DOS)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	\$1,613.70
	97110 (6 units @ \$215.16 X 13 DOS)		\$2,797.08
	99213 (\$67.20 X 19 DOS)		\$1,276.80
	99214 (\$105.45 X 1 DOS)		\$105.45
	99080-73 (\$15.00 X 1 DOS)		\$15.00
<b>TOTAL</b>			\$5,808.03

#### 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 disputed medical necessity issues.

Per Rule 133.308(e)(1) dates of service 04-27-05 and 04-29-05 were not timely submitted and therefore were not part of the review.

**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 \$5,808.03. 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:

06-20-06

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

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

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

Order by:

06-20-06

\_\_\_\_\_  
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.

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## NOTICE OF INDEPENDENT REVIEW

**NAME OF EMPLOYEE:** \_\_\_\_\_  
**IRO TRACKING NUMBER:** M5-06-1598-01  
**NAME OF REQUESTOR:** Rogelio Rodriguez, D.C.  
**NAME OF CARRIER:** American Home Assurance  
**DATE OF REPORT:** 06/07/06  
**DATE OF AMENDED 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 in the area 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:

- 257 pages of documentation.
- 02/21/05 – Initial medical report from Rogelio G. Rodriguez, D.C.
- 02/24/05 – MRI of the lumbar spine from Edward Knudson, M.D.
- 03/02/05 – Initial patient consult with K. Bobby Pervez, M.D.
- 03/09/05 – Electrodiagnostic report of the lumbar spine and bilateral lower extremities from Dr. Kureshi.
- 03/16/05 – Subsequent medical report from Rogelio G. Rodriguez, D.C.
- 04/27/05 Thru 05/09/05 – Documentation from Rogelio G. Rodriguez, D.C., for five physical medicine sessions.
- 05/05/05 – Operative report from K. Bobby Pervez, M.D.
- 05/05/05 – Prescription for continued therapy from Robina Wahed, M.D. It should be noted that this prescription is somewhat difficult to read, and the spelling on the physician's name may not be accurate.
- 05/11/05 – Follow-up note from K. Bobby Pervez, M.D.

- 05/11/05 Thru 05/16/05 – Documentation of two therapeutic exercise sessions.
- 05/18/05 – Required Medical Evaluation (RME) from Martin R. Steiner, M.D.
- 05/20/05 Thru 05/31/05 – Documentation from five physical medicine sessions with Rogelio G. Rodrigues, D.C.
- 05/26/05 – Preauthorization approval for a second lumbar epidural steroid injection.
- 05/26/05 – A Functional Capacity Evaluation (FCE) performed by Steven B. Sopher, P.T.
- 06/02/05 – Operative report from K. Bobby Pervez, M.D.
- 06/02/05 – Prescription to continue physical therapy three times a week for four weeks.
- 06/06/05 Thru 07/01/05 – Documentation from nine physical medicine sessions with Rogelio G. Rodriguez, D.C.
- 06/08/05 – A follow-up note from K. Bobby Pervez, M.D.
- 06/22/05 – A letter from Parvaz Qureshi, M.D.
- 06/23/05 – Operative report from K. Bobby Pervez, M.D.
- 07/01/05 – RME disagreement from Rogelio G. Rodriguez, D.C.
- 07/13/05 – Adverse determination for preauthorization request.
- 07/27/05 Thru 08/03/05 – Documentation for four physical medicine session with Rogelio G. Rodriguez, D.C.
- 08/12/05 & 09/12/05 – Subsequent medical reports from Rogelio G. Rodriguez, D.C.
- 09/14/05 – Follow-up note from K. Bobby Pervez, M.D.
- 10/04/05 & 10/26/05 – Follow-up notes from Rogelio G. Rodriguez, D.C.
- 10/11/05 – Subsequent medical report from Rogelio G. Rodriguez, D.C.
- 10/26/05 – Follow-up note from K. Bobby Pervez, M.D.
- 11/09/05 – Subsequent medical report from Rogelio G. Rodriguez, D.C.
- 12/07/05 – A Functional Capacity Evaluation from Synergy Chiropractic & Wellness Care.
- 12/13/05 – Designated Doctor Evaluation with Ravindra Arora, M.D.
- 01/06/06 – Subsequent medical report from Rogelio G. Rodriguez, D.C.
- 01/16/06 – Letter of disagreement from Rogelio G. Rodriguez, D.C.
- 01/18/06 – Letter from Rogelio G. Rodriguez, D.C.
- 02/06/06 – Subsequent medical report from Rogelio G. Rodriguez, D.C.
- 02/14/06 – A letter of clarification from Ravindra Arora, M.D.
- 02/20/06 – A request for reconsideration from Rogelio G. Rodriguez, D.C.
- 02/21/06 – Letter from Rogelio G. Rodriguez, D.C.
- 02/21/06 – Request for reconsideration from Rogelio G. Rodriguez, D.C.
- 02/22/06 – Referral acknowledgement from the Texas Department of Insurance.
- 02/28/06 – Request for reconsideration from Rogelio G. Rodriguez, D.C.
- 03/06/06 – Subsequent medical report from Rogelio G. Rodriguez, D.C.

### **Clinical History Summarized:**

The employee was injured at work on \_\_\_\_ when she received a blow to the lumbar spine.

The employee initially received care from Dr. Rose at North Shore Occupational Clinic, who prescribed medications and returned the employee to work at light duty status.

On 02/21/05, the employee began treatment with Rogelio G. Rodriguez, D.C., which consisted of chiropractic care, and active and passive physical therapy from that date through at least 03/06/06, which is the most recent documentation provided for review.

An MRI of the lumbar spine revealed a 5 mm left paracentral disc herniation at L5-S1.

Electrodiagnostic studies revealed evidence suggestive of a left L5 radiculopathy; however, the interpretation of the electrodiagnostic studies was a point of disagreement by several providers.

The employee has undergone three lumbar epidural steroid injections which have been documented by the treating doctor to have failed.

The employee has been established to be at Maximum Medical Improvement (MMI) with a 5% whole person impairment rating by a designated doctor, which has been disputed by the treating doctor.

Currently, it appears that the treating doctor believes the employee has failed conservative measures and is a candidate for surgical intervention of the lumbar spine. However, the necessity of surgical intervention is apparently being disputed by the insurance carrier.

### **Disputed Services:**

Therapeutic exercise (97110), office visits (99213/99214), and special reports (99080) for dates of service for 05/02/05 through 07/08/05.

### **Decision:**

Therapeutic exercise (97110), office visits (99213/91214), and special reports (99080) appear to be medically necessary and related to the work injury of \_\_\_\_.

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

A complicated factor in this case is that there is significant documentation indicating the possibility of symptom magnification and/or malingering by the employee. It should be noted on the initial medical report from Rogelio G. Rodriguez, D.C., the employee reported she injured her back while unloading shoe boxes from a pallet when the pallet fell onto her impacting her low back. This is in contrast to the initial consultation dated 03/02/05 with K. Bobby Pervez, M.D., who reported “the patient states she was working with a dolly in a warehouse at \_\_\_\_\_ and she was moving some boxes. The patient states that she slipped and hit her back directly on the dolly against the metal part of this apparatus.” There was inconsistency of range of motion findings throughout the documentation in this file. Again, on the initial report from Dr. Rodriguez, range of motion findings indicated flexion of 20 degrees, extension 10 degrees, left lateral flexion 15 degrees, and right lateral flexion 16 degrees. These findings are in contrast to the initial consultation with Dr. Perez, who indicated lumbar flexion of 60 degrees and “extension without significant problems”.

Also of concern in this file is the FCE from 05/26/05. This evaluation indicated the employee’s bilateral grip test failed to produce a bell shaped curve and was therefore considered invalid. The test also indicated that range of motion testing of the lumbar spine was invalid per the *AMA Guides*. It was also noted that although the employee indicated severe pain, there was minimal signs of muscle recruitment and minimal heart rate changes, all indicating that the employee was self-limiting and performance did not appear to be “a truthful indication of her abilities”.

It should be noted that the treating doctor responded to the findings of the FCE suggesting that the employee was self-limiting due to fear of reinjury and not as a result of malingering and/or symptom magnification.

In my opinion, the basis of this decision has to be made considering the precertification and performance of epidural steroid injections in the lumbar spine. On 05/05/05, the first in a series of three lumbar epidural steroid injections was performed. It should be noted that this procedure was preauthorized and approved, as was a second epidural steroid injection performed on 06/08/05.

The primary purpose of a lumbar epidural steroid injection would be to establish a pain free window during which the employee could undergo active rehabilitation and attempt to strengthen the lumbar spine and increase range of motion and endurance of the lumbar spine in an attempt to circumvent the necessity of surgical intervention. In my opinion, it would be inappropriate to allow the employee to undergo the lumbar steroid injections without allowing the employee to then follow-up with appropriate therapeutic exercises in order to fulfill one of the primary objectives of the epidural steroid injection procedure.

Since the continued approval of the medical necessity of epidural steroid injections extended throughout the dates of service in question, it is my opinion that therapeutic exercises, subsequent office visits, and special reports related to these dates of service would also be medically necessary.

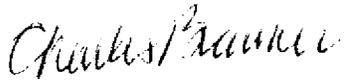
This review was conducted on the basis of medical and administrative records provided with the assumption that the material is true and correct.

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 DWC via facsimile or U.S. Postal Service this 7th day of June, 2006 from the office of IMED, Inc. Sincerely,

A handwritten signature in cursive script that reads "Charles Brawner".

Charles Brawner  
Secretary/General Counsel