



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

Type of Requestor: (X) Health Care Provider () Injured Employee () Insurance Carrier	
Requestors Name and Address: Gabriel R. Gutierrez, D.C. P O BOX 229 Katy, Texas 77492-0229	MDR Tracking No.: M5-07-0101-01
	Claim No.:
	Injured Employee's Name:
Respondent's Name and Address: Liberty Mutual Fire Insurance Rep Box # 28	Date of Injury:
	Employer's Name:
	Insurance Carrier's No.:

PART II: REQUESTOR'S PRINCIPLE DOCUMENTATION AND POSITION SUMMARY

Requestor's Position Summary: Per the Table of Disputed Services "1. Treatment provided to Mr. ___ is reasonable and necessary per Texas Labor Code 408.21. a)...This is a pattern and racket the carrier and Sato have demonstrated for several years. A pattern of not sending all the medical records to Sato and Sato continues to formulate negative opinions citing lack of documentation...Furthermore, the carrier has no basis for denying payment based upon this type of reason."

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: Per the Table of Disputed Services "Our position remains the same."

Principle Documentation:

1. Response to DWC

PART IV: SUMMARY OF DISPUTE AND FINDINGS

Date(s) of Service	CPT Code(s) or Description	Medically Necessary?	Additional Amount Due (if any)
03-14-06 to 03-29-06	97545-WH-CA (2 units @ \$128.00 X 10 DOS)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	\$1,280.00
03-14-06 to 03-29-06	97546-WH-CA (6 units @ \$384.00 X 10 DOS)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	\$3,840.00
03-30-06 to 04-28-06	97545-WH-CA and 97546-WH-CA	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	\$0.00
05-01-06	97750-FC (1 unit @ \$38.26 X 8 units) (see note below)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	\$285.60
	Note: The MAR is \$306.08, however, the Requestor only disputed \$285.60.		
TOTAL DUE			\$5,405.60

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 \$5,405.60. 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.

Findings and Decision by:

11-29-06

Authorized Signature

Typed Name

Date of Findings and Decision

Order by:

11-29-06

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.

November 10, 2006

TX DEPT OF INS DIV OF WC
AUSTIN, TX 78744-1609

CLAIMANT: ___

EMPLOYEE: ___

POLICY: M5-07-0101-01

CLIENT TRACKING NUMBER: M5-07-0101-01

Amended 11/29/06

Medical Review Institute of America (MRIOA) has been certified by the Texas Department of Insurance as an Independent Review Organization (IRO). The Texas Department of Insurance Division of Workers Compensation has assigned the above mentioned case to MRIOA for independent review in accordance with DWC Rule 133 which provides for medical dispute resolution by an IRO.

MRIOA has performed an independent review of the proposed care to determine if the adverse determination was appropriate. In performing this review all relevant medical records and documentation utilized to make the adverse determination, along with any documentation and written information submitted, was reviewed. Itemization of this information will follow.

The independent review was performed by a peer of the treating provider for this patient. The reviewer in this case is on the DWC approved doctor list (ADL). The reviewing provider has no known conflicts of interest existing 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 decision before referral to the IRO.

Records Received:

Records from the State:

Notification of IRO Assignment dated 10/18/06 - 2 pages

Medical Dispute Resolution Request/Response form dated 09/14/06 - 1 page

Provider information form - 1 page

Table of Disputed Services - 5 pages

Explanation of Benefits forms dated 08/10/06 - 12 pages

Notice of Medical Dispute Resolution form undated - 1 page

Records received from Requestor:

Fax cover sheet dated 07/29/06 - 1 page

Letter from Gabriel Gutierrez DC to Texas Department of Insurance Complaints Resolution dated 07/29/06 - 1 page

Letter from Gabriel Gutierrez DC to TDI-DWC dated 07/29/06 - 1 page

Letter from Gabriel Gutierrez DC to Liberty Mutual Insurance dated 07/29/06 - 5 pages

Letter from Gabriel Gutierrez DC to IRO doctor dated 10/12/06 - 3 pages

EOB's of Carrier's Initial Denial - 1 page

Explanation of Benefits forms dated 05/26/06 - 2 pages

Letter from Simon Foster DC to Gabriel Gutierrez dated 09/21/06 - 4 pages

Professional Reviews, Inc. Peer review dated 05/24/06 - 3 pages

Medical Dispute Resolution Request/Response form dated 09/14/06 - 1 page

Provider information form - 1 page

Table of Disputed Services - 5 pages

Professional Reviews, Inc. Peer review dated 05/24/06 - 4 pages

Professional Reviews, Inc. Peer review dated 08/15/06 - 3 pages

Guidelines and References that support Multi-disciplinary Intervention such as Work Hardening - 3 pages

Other Relevant Information Submitted to Carrier – 1 page
Letter from Texas Workers' Compensation Commission to the Governor of Texas dated 11/23/04 – 2 pages
Report on Legislative Recommendations December 2004 – 3 pages
TWCC Advisory 2003-01 dated 01/16/03 – 1 page
Statutory Administrative and Ethics Laws – 1 page
TWCC Fast Facts – 3 pages
Work Hardening and Work Conditioning Programs Exempted from Preauthorization and Concurrent Review
– 15 pages
Medical Fee Guideline 1996 – 1 page
Guidelines for Programs for Injured Workers – 9 pages
MayoClinic.com article – 3 pages
ODG Treatment Workers' Comp 2005 – 5 pages
Occupational Medicine Practice Guidelines second edition – 30 pages
Assessment for Work Hardening Individual Treatment Plan & Functional Goals and Objectives – 10 pages
Report of Functional Capacity Evaluation – 44 pages
Records from Total Rehab Institute dated 08/20/03 to 01/6/06 – 26 pages
Ankle Radiology Report dated 04/06/04 – 1 page
Right Knee Radiology report dated 08/21/03 – 1 page
Right Ankle Radiology Report dated 10/13/03 – 1 page
Right Ankle Radiology Report dated 08/21/03 – 1 page
Bone Scan Report Right Ankle dated 10/29/04 – 1 page
MRI Right Ankle report dated 08/25/03 – 1 page
MRI Right Knee Report dated 08/25/03 – 1 page
MRI Right Foot Report dated 08/25/03 – 1 page
Orthopedic Consult dated 10/10/04 – 2 pages
DPM Consult/Treatment/Surgical Records dated 04/27/04-11/29/05 – 8 pages
Texas Medical Rehabilitation & Pain Center dated 10/02/03 – 3 pages
Orthopedic Consult dated 10/09/03-01/24/04 – 7 pages
TWCC-69 Report of Medical Evaluation dated 11/08/04 – 1 page
Impairment Evaluation Record dated 11/08/04 – 11 pages
Impairment Evaluation Record dated 10/27/05 – 5 pages
ROM Data dated 10/27/05 – 10 pages
NCV/EMG Report Data dated 09/04/03-08/08/05 – 6 pages
Records from Total Rehab Institute dated 09/04/03-11/30/05 – 50 pages
Records from Shepherd Square Podiatry dated 10/30/03-05/03/05 – 23 pages
Psychosocial Assessment/Treatment Data from Monie Smith MA dated 02/26/06 – 3 pages
Work Hardening Records dated 04/28/06 – 8 pages
Work Hardening Program Documentation – 04/17/05-04/28/06 – 95 pages
Medical Dispute Resolution Request/Response form undated – 1 page
Provider information form – 1 page
Table of Disputed Services – 5 pages
HCFA/EOB Records dated 03/14/06-05/01/06 – 55 pages

Records received from Insurance Company:

IME referral form dated 12/08/05 – 3 pages
ROM Data dated 09/25/03-12/04/05 – 50 pages
ER Surgical Records dated 06/29/03 – 3 pages
Operative report dated 06/29/03 – 3 pages
Orthopedic Consult Records dated 07/14/03-07/30/03 – 3 pages
Records from Jeffrey Reuben, MD dated 10/09/03-01/24/03 – 9 pages
Texas Workers' Compensation Work Status Reports dated 07/14/03-01/23/06 – 30 pages
Records from Total Rehab Institute dated 08/20/03-01/23/06 – 194 pages
Records from Optimum Medical Testing dated 07/21/03-08/08/05 – 14 pages
Accident Details Form dated 07/14/03 – 1 page

Employee Request to Changer Treating Doctors form dated 08/25/03 – 1 page
Appointment notification dated 10/01/03 – 2 pages
Peer Review Record from Scott Neuburger, DC dated 10/21/03 – 2 pages
Clinical summary report dated 10/27/03 – 2 pages
Peer Review Record from Professional Reviews, Inc. dated 10/28/03 – 3 pages
Initial Foot and Ankle Consult report dated 10/30/03 – 4 pages
Office records from Shepherd Square Podiatry dated 11/13/03–01/24/06 – 55 pages
Orthopedic Records from Donald Nowlin, MD dated 11/17/03–09/20/04 – 14 pages
Peer Review Analysis Case Report for Liberty Mutual dated 12/09/03 – 4 pages
Defense Investigators Group, Inc. report dated 03/04/04 – 2 pages
TWCC Designated Doctor Information dated 04/05/04 – 1 page
Designated Doctor Evaluation dated 04/05/04–11/08/04 – 14 pages
TWCC–69 Report of Medical Evaluation dated 04/05/04–11/08/04 – 2 pages
Physician’s Statement of Medical Necessity dated 06/22/04 – 1 page
Certificate of Medical Necessity dated 06/22/04 – 1 page
Interlocutory Order dated 07/21/04 – 1 page
Letter from ___ to Ruben Rendon dated 06/17/04 – 1 page
TWCC 32 Request for Designated Doctor dated 10/01/04 – 1 page
Orthopedics Consult dated 10/10/04 – 2 pages
AIRS Impariment Detail report undated – 3 pages
History from Cleburne Family Medicine Associates dated 06/07/05 – 3 pages
Patient Treatment Record dated 08/18/05–01/23/06 – 14 pages
Initial Examination from Dynamic Pain & Injury Relief Center dated 08/18/05 – 3 pages
Anesthesia Record dated 09/07/05 – 1 page
Operative report dated 09/07/05 – 2 pages
Accutest Diagnostics Work Task Analysis Report dated 11/22/05 – 10 pages
Preauth request dated 11/30/05 – 1 page
Letter of necessity for NMES muscle stimulator dated 12/01/05 – 1 page
Supply Order dated 10/30/05 – 3 pages
TENS unit plan language – 1 page
Letter of Medical Necessity for Brace dated 12/09/05 – 1 page
Durable Medical Equipment Prescription dated 12/09/05 – 1 page
Notice of Disputed Issues dated 12/15/05 – 1 page
Letter for purchase of a muscle stimulator dated 01/03/06 – 2 pages
Required Medical Examination Notice dated 12/13/05 – 2 pages
IME report dated 1/20/06 – 6 pages
Work Hardening Assessment Psychosocial History dated 02/24/06 – 3 pages
Report of Functional Capacity Evaluation dated 02/21/06–05/01/06 – 36 pages
Work Hardening Group Therapy dated 03/17/06–04/28/06 – 63 pages
Assessment for Work Hardening, Individual Treatment Plan & Functional Goals and Objectives dated 02/21/06–03/21/06 – 20 pages
Work Hardening Program Documentation dated 03/14/05–04/28/06 – 59 pages
Statement of Medical Necessity from Juan C. Galvan, MD dated 01/03/06 – 1 page
Peer Review Record from Professional Reviews, Inc. dated 05/24/06 – 4 pages
Peer Review Record from Professional Reviews, Inc. dated 08/15/06 – 3 pages
Medical record invoice dated 09/07/06 – 1 page
History and physical page 3 of 3 only dated 07/08/03 – 1 page
X-ray LS spine dated 09/29/03 – 2 pages
X-ray ankle dated 06/29/03 – 2 pages
X-ray chest dated 06/29/03–07/02/03 – 4 pages
X-ray right knee dated 08/21/03 – 1 page
X-ray right ankle dated 08/21/03–10/13/03 – 2 pages
MRI right ankle dated 08/25/03 – 1 page
MRI right foot dated 08/25/03 – 1 page

MRI right knee dated 08/25/03 – 1 page
X-ray right and left ankle dated 04/06/04 – 1 page
Bone scan right ankle dated 10/29/04 – 1 page
X-ray right forearm dated 11/09/05 – 1 page
EKG report dated 06/29/03 – 1 page

Summary of Treatment/Case History:

The claimant was involved in a work related injury while employed by _____ as a General Laborer when he was involved in a work related injury on _____. Claimant sustained a medial malleolus fracture of the right ankle and a Hawkins type III fracture/dislocation of the right talus following a tree limb falling onto the right lower extremity. On 06/29/03 the claimant presented to the Scott and White Memorial ER for immediate surgical applications. Following the surgery the claimant consulted with Dr. Calvo (Orthopedist). Radiographic imaging of the right ankle on 08/21/03 revealed good internal fixation.

On 08/20/03, the claimant presented to the offices of Juan Galvan DC, and a diagnosis of right knee sprain, right foot pain, and calf atrophy; additional diagnostics were advised. 08/25/03 MR imaging of the right ankle revealed probable torn anterior Talofibular ligament. NCV/EMG data from testing performed on 09/04/03 revealed evidence of a moderate peroneal and tibial neuropathy of the right ankle likely affecting motor/sensory components; additional neurodiagnostics were advised in 2–3 months. Continued and persistent paresthesia over the right lateral ankle was noted by Michael Little PA on 10/02/03. Claimant presented to Anthony Lamarra DPM on 10/30/03. In November of 2003, Anthony Lamarra DPM performed steroid injections over the right ankle. On 11/17/03, the claimant presented to Donald Nowlin MD who voiced strong clinical opposition against the course of care rendered by chiropractic providers and podiatric providers. RSD symptomology was noted on 12/13/03 by Jeffery Reuben MD (orthopedic).

Hardware removal and exploration was noted as appropriate by Jeffery Reuben MD (orthopedic) on 01/24/04. On 09/20/04, the claimant presented to Donald Nowlin MD and the report revealed that chiropractic, physical therapy, work hardening, and surgical applications were not appropriate; orthopedic provider continued to note current course of management with chiropractic provider and podiatrist. Possible RSD diagnosis was noted in a consultation with William Donovan MD on 10/10/04.

Neurodiagnostics performed on 08/08/05 revealed a neuropathy of moderate/severe degree to right peroneal, tibial motor compartments and right sural and superficial peroneal sensory compartments. Claimant was diagnosed with Sinus Tarsi Syndrome and surgical applications were performed by Anthony Lamarra DPM on 09/07/05.

Functional capacity evaluation was performed by Gabriel Gutierrez DC on 02/21/06 that revealed failure with HEP, persistent pain 6/10 on VAS, current PDC of sedentary, and provider's recommendation for a multidisciplinary treatment program. Psychosocial assessment performed on 02/26/06 revealed BDI score of 11, BAI score of 14, coupled with recommendations to a work hardening program. 30 sessions of work hardening applications were implemented by the provider from 03/14/2006–04/28/2006. FCE performed on 05/01/06 revealed that the claimant had a light PDL, 2–5/10 VAS, and continued ROM deficits in all planes.

Questions for Review:

Dates of Service 3/14/06–5/1/06

1. Please advise medical necessity of the following disputed services #97545–CH CA, #97546 WH CA, and #97750–FC Functional capacity exam.

Explanation of Findings:

1. Please advise medical necessity of the following disputed services #97545–CH CA, #97546 WH CA, and #97750–FC Functional capacity exam.

The FCE testing on 05/01/06 to close down formal management of this claimant's condition is appropriate; the evaluation should have been constructed to implement a progressive HEP.

Medical record presented does not in any capacity warrant quantitative data to support the complete duration of work hardening applications implemented by the provider. There is no efficacy associated with the applications of Work Hardening beyond the initial course of 10 sessions. The provider has not established clinical data to warrant the complete course of 30 sessions of this multidisciplinary RTW application. The psychosocial data does not support the duration implemented by the provider.

It is also evident from the reviewed records that the provider's functional restorative goals for the management of this claimant were unrealistically skewed. It was nearly certain to ascertain that this claimant would not return to general industry in a heavy PDL. However, it is equally likely that the claimant was capable of some degree of return to general industry if trained and educated in a multidisciplinary course of management over a controlled trial.

FCE testing (#97750-FC) on 05/01/06 is appropriate in the management of this claimant's condition. Work hardening sessions (#97545 and #97546) over a 10 session course are appropriate given the claimant's deconditioned state and persistent pain avoidance behavior.

Conclusion/Decision to Certify:

A course of 10 sessions of work hardening (#97545 and #97546) and the FCE (#97550-FC) on 05/01/06 are appropriate based upon the extensive medical records reviewed. It is clear that the claimant exhibited considerable pain/activity avoidance behaviors that required clinical reeducation in a multidisciplinary format.

Further, the provider's initial goal constructs were flawed in that it was clearly evident that a return to a medium or greater PDC was statistically unrealistic. Despite the lofty goals of the provider, the transition of the claimant toward a multidisciplinary course of care was appropriate to encourage a return to activity and discourage fear/activity avoidance behaviors.

Conclusion/Decision to Not Certify:

Provider has failed to establish efficacy in a qualitative/quantative manner to warrant additional work hardening management beyond an initial course of 10 sessions.

References Used in Support of Decision:

Kunkel M, et al. Return to work after foot and ankle injury. *Foot Ankle Clin.* 2002 Jun;7(2): 421-8, viii.

Lechner DE. Work hardening and work conditioning interventions: do they affect disability? *Phys Ther.* 1994 May;74(5): 471-93.

Overview of implementation of outcome assessment case management in the clinical practice. Washington State Chiropractic Association. 2001. 54p.

Strong S, et al. Use of functional capacity evaluations in workplaces and the compensation system: a report on workers' and report users' perceptions. *Work.* 2004;23(1): 67-77.

Weir R., et al. Interventions for disability management. *Clin J Pain.* 2001 Dec;17(4 Suppl): S128-32.

Wind H, et al. The utility of Functional Capacity Evaluation: the opinion of physicians and other experts in the field of return to work and disability claims. *Int Arch Occup Environ Health.* 2006 Jun;79(6): 528-34. Epub 2006 Jan 14.

The chiropractor providing this review received his degree in chiropractic in 2000. The reviewer is a member of the American College of Sports Medicine, the Meckenzie Institute, the Occupational Injury Prevention and Rehabilitation Society, the International Association of Rehabilitation Professionals and the National Safety Council. The reviewer is pursuing additional qualifications as a diplomate in rehabilitation. They are also pursuing Occupational Health and Safety Technologist certification in preparation for their Certified Safety Boards. The reviewer also works as a review doctor for their state workers compensation commission in the medical dispute resolution process.

MRloA is forwarding this decision by mail, and in the case of time sensitive matters by facsimile, a copy of this finding to the treating provider, payor and/or URA, and the DWC.

It is the policy of Medical Review Institute of America to keep the names of its reviewing physicians confidential. Accordingly, the identity of the reviewing physician will only be released as required by state or federal regulations. If release of the review to a third party, including an insured and/or provider, is necessary, all applicable state and federal regulations must be followed.

Medical Review Institute of America retains qualified independent physician reviewers and clinical advisors who perform peer case reviews as requested by MRloA clients. These physician reviewers and clinical advisors are independent contractors who are credentialed in accordance with their particular specialties, the standards of the American Accreditation Health Care Commission (URAC), and/or other state and federal regulatory requirements.

The written opinions provided by MRloA represent the opinions of the physician reviewers and clinical advisors who reviewed the case. These case review opinions are provided in good faith, based on the medical records and information submitted to MRloA for review, the published scientific medical literature, and other relevant information such as that available through federal agencies, institutes and professional associations. Medical Review Institute of America assumes no liability for the opinions of its contracted physicians and/or clinician advisors. The health plan, organization or other party authorizing this case review agrees to hold MRloA harmless for any and all claims which may arise as a result of this case review. The health plan, organization or other third party requesting or authorizing this review is responsible for policy interpretation and for the final determination made regarding coverage and/or eligibility for this case.

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Case Analyst: Stacie ext 577

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