July 20, 2004
July 20, 2004 **REVISED REPORT, Page 3, Rationale, paragraph 3, line 2.**

Mr._____

Re: Medical Dispute Resolution
MDR #: M2-04-1496-01-SS
TWCC#: 03-220224
Injured Employee:
DOI:
SS#:
IRO Certificate No.:

**TRANSMITTED VIA FAX TO**:
Texas Workers' Compensation Commission
Medical Dispute Resolution
Fax: (512) 804-4868

Kenneth Berliner, M.D.
Attention: Brenda Gonzalez
(281) 875-3285

Pacific Employers Ins. Co.
Attention: Cheryl Shepherd
(713) 403-3125

Richard Kondejewski, M.D.
(713) 777-9306

Dear Mr. _____:

In accordance with the requirement for TWCC to randomly assign cases to IROs, TWCC assigned your case to IRI for an independent review. IRI has performed an independent review of the medical records to determine medical necessity. In performing this review, IRI reviewed relevant medical records, any documents provided by the parties referenced above, and any documentation and written information submitted in support of the dispute.

I am the Secretary and General Counsel of Independent Review, 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 any of the treating physicians or other health care providers or any of the physicians or other health care providers who reviewed this care for determination prior to referral to the Independent Review Organization.

Information and medical records pertinent to this medical dispute were requested from the Requestor and every named provider of care, as well as from the Respondent. The independent review was performed by a matched peer with the treating health care provider. Your case was reviewed by a physician who is Board Certified in Pain Management and is currently listed on the TWCC Approved Doctor List.

# REVIEWER'S REPORT

**Information Provided for Review:**
TWCC-60, Table of Disputed Services, EOB's
Information provided by Requestor: letter of medical necessity, office notes and radiology reports.
Information provided by Respondent: correspondence and designated doctor exams.

**Clinical History:**
This claimant was injured while on his job on _____, resulting in pain in his lower back. X-rays were performed on 6/10/03 that showed a grade 1 anterolisthesis of L5 on S1 with suspicion of a pars defect at the L5 level on the left. The claimant then had physical therapy including massage and exercise that was said to have helped his pain.

An independent evaluation was performed on 8/12/03, less than 3 months following the alleged event. In that evaluation, the examining doctor stated that the claimant "did not provide consistent effort during the functional capacity evaluation", and "that the examinee was self-limiting and magnifying his reported pain levels secondary to the absence of elevated vital signs". The examining doctor also stated that the results of the evaluation, therefore, "may not truly represent the claimant's full abilities". Following that evaluation, the claimant continued conservative management including a series of 3 lumbar epidural steroid injections. A lumbar MRI was performed on 7/31/03 demonstrating 2-3 mm annular disc bulges, disc protrusion, and disc herniation at L3-4, L4-5, and L5-S1 with a posterocentral annular tear at the L5-S1 level, and an associated tear at the L4-5 level.

After failure of conservative treatment the claimant was then evaluated by an orthopedic surgeon (the Requestor), who recommended the claimant undergo lumbar discography. This was accomplished on 4/30/04. In addition, lumbar x-rays were taken on 4/30/04 demonstrating the same grade 1 anterolisthesis of L5 on S1 with spondylolysis at the L5 level, confirming the previous suspicion of pars defect. Facet arthropathy was also seen at L4-5 and L5-S1. Discography was carried out on that date. The L2-3, L3-4, and L4-5 discs were injected with 1.2 cc of contrast media, but injected the L5-S1 disc with 3 cc of contrast media. No pressure readings were recorded as part of the discography data. At L2-3 and L3-4 and L4-5 there was no abnormality seen in the morphology of the disc and no pain reported. At the L5-S1 level, however, the claimant reported back pain at a level of 7/10, and contrast media was seen to leak into the epidural space with a posterocentral annular fissure. The post discogram CT demonstrated a posterocentral annular fissure with a 3-mm posterocentral and superiorly protruded disc herniation at L5-S1. Mild facet arthropathy was also seen at L5-S1 with a conclusion of there being "degenerative disc disease" of the L5-S1 disc.

**Disputed Services:**
IDET at L5-S1.

**Decision:**
The reviewer agrees with the determination of the insurance carrier and is of the opinion that IDET at L5-S1 is not medically necessary in this case.

**Rationale:**
Unfortunately, the discogram as performed does not provide any documentation of pressure readings during the injection of contrast media. Moreover, 250 percent more dye was injected into the L5-S1 disc than into any of the other 3 discs, which makes pressure reading even more essential, especially since the L5-S1 disc allegedly produced concordant pain when this larger volume of injectate was injected. The mere injection of a larger volume could possibly be the sole reason for his claimant reporting pain when the L5-S1 disc was injected. The study would have been far more valid had an equal volume of injectate been placed into each disc, or if pressure readings were included for each of the 4 disc injections. If pressure readings had been provided, then it would be possible to determine whether that larger volume of injectate into the L5-S1 disc caused a greater amount of pressure in that disc, thereby causing a painful response to the injection.

Unfortunately without pressure readings, the discogram results are essentially invalid, and no therapeutic procedure should be based on such a test. In addition, the post discogram CT showed that the claimant had a disc herniation at the L5-S1 level, which is not an indicated condition for performance of the IDET procedure. Finally, it is clearly documented that the claimant was already manifesting symptom magnification and willful lack of effort during a functional capacity evaluation done only 10 weeks following the work injury. Such a presentation of symptom magnification is, in itself, a relative contraindication for any invasive procedures to be performed, and the appearance of such a situation within only 10 weeks of the injury makes this documentation of even greater concern and significance.

Therefore, since the claimant was already manifesting symptom magnification within **ten (10) weeks of the injury**, the post discogram CT shows disc herniation at the L5-S1 level, which is not an indicated medical condition for performance of IDET, and the result of the 4-level discogram performed on 4/30/04 cannot be interpreted with complete validity, the carrier was correct in denying authorization for an IDET procedure on the L5-S1 disc. IDET is not indicated for treatment of disc herniation, only for treatment of annular tear.

Although this is an annular tear at L5-S1, the 3-mm disc herniation cannot, and should not, be ignored in evaluating this claimants candidacy for IDET, especially giving the other concerns evident in review of this file. Finally, since the claimant's complaint is of lumbar pain, and there is clear documentation of evidence of facet arthropathy, the claimant should have undergone diagnostic/therapeutic facet injections to rule out posterior elements of pain before even being considered for IDET, and certainly before undergoing discography. Failure of epidural steroid injection is not sufficient to rule out posterior element pain. For all these reasons, therefore, an L5-S1 IDET is not medically reasonably, necessary, or indicated for treatment of this claimant's work related injury.

We are simultaneously forwarding copies of this report to the payor and the Texas Workers' Compensation Commission. This decision by Independent Review is deemed to be a Commission decision and order.

YOUR RIGHT TO REQUEST A HEARING

Either party to this medical dispute may disagree with all or part of this decision and has a right to request a hearing.

**If disputing a spinal surgery prospective decision** a request for a hearing must be in writing and it must be received by the TWCC Chief Clerk of Proceedings **within ten (10) days** of your receipt of this decision (28 Tex. Admin. Code 142.5©).

**If disputing other prospective medical necessity** (preauthorization) decisions a request for a hearing must be in writing and it must be received by the TWCC Chief Clerk of Proceedings **within twenty (20) days** of your receipt of this decision (28 Tex. Admin. Code 148.3).

This Decision is deemed received by you **five (5) days** after it was mailed (28 Tex. Admin. Code 102.4(h) or 102.5 (d)). A request for a hearing should be sent to:

Chief Clerk of Proceedings
Texas Workers' Compensation Commission, MS-48
7551 Metro Center Dr., Ste. 100
Austin, TX 78744-1609

A copy of this decision should be attached to the request. The party appealing the decision shall deliver a copy of its written request for a hearing to all other parties involved in the dispute.

I hereby verify that a copy of this Independent Review Organization (IRO) Decision was sent to the carrier, the requestor and claimant via facsimile or U.S. Postal Service from the office of the IRO on July 20, 2004.

Sincerely,

Gilbert Prud'homme
Secretary & General Counsel

GP/thh