May 21, 2004

MDR Tracking #: M2-04-0736-01
IRO #: 5251

___ has been certified by the Texas Department of Insurance as an Independent Review Organization. The Texas Worker's Compensation Commission has assigned this case to ___ for independent review in accordance with TWCC Rule 133.308 which allows for medical dispute resolution by an IRO.

___ 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.

The independent review was performed by a matched peer with the treating doctor. This case was reviewed by a licensed Medical Doctor board certified and specialized in Orthopedic Surgery. The reviewer is on the TWCC Approved Doctor List (ADL). The ___ health care professional has signed a certification statement stating that no known conflicts of interest exist between the reviewer and any of the treating doctors or providers or any of the doctors or providers who reviewed the case for a determination prior to the referral to ___ for independent review. In addition, the reviewer has certified that the review was performed without bias for or against any party to the dispute.

CLINICAL HISTORY

This review is in regard to the indications for repeat discography in this patient who has continued back pain after a lumbar fusion. The treating physician is ___. The requesting physician is surgeon ___. The request was submitted to perform a lumbar discography with CT scan at L3-4 and 4-5 to evaluate continued back pain after an L5-S1 fusion, for an injury when the patient reported pain in an activity of bending over to pick something up from the floor. On 12/2/03 the request for discography was declined based on the information that a cervical myelogram was pending and that considering surgery for the cervical spine was not appropriate in regard to planning surgeries in two spinal regions in close proximity. It is reported that the motion above the L5-S1 fusion was normal and that there was no motion at the fusion site and that discography in Worker's compensation patients have significant unreliability as produced by the Caragee Studies at Stanford. A hand written medical note from the surgeon and the pain physician reports that this is a 30-year-old female who has ongoing symptoms with recent studies suggesting a stenosis at L4-5 above her 5-1 fusion and submitted persistent requests for repeat discography. It is documented on 11/12/03 that the surgeon was awaiting myelography of the cervical spine but the patient continued to have symptoms in the lower back with an 8-millimeter spinal canal at 4-5. Perioperative notes and post-operative notes regarding this back pain revealed that this patient never really had significant relief of back pain and/or leg pain, despite the surgery.

The indications for surgery were L5-S1 discogenic pain with a positive discography. A second opinion submitted was in agreement with the proposed surgery. The surgery was then preauthorized and carried out as requested. In review of pre-operative testing prior to the surgery that was performed, myelography revealed a disc protrusion at 5-1 and also revealed a defect at 4-5. At L5-S1, both S1 nerve roots were impinged with diminished filling and evidence of bilateral recess stenosis. There was significant disease at 4-5 but to a lesser degree. Pre-operative discography revealed positive concordant pain at 4-5 as well as 5-1 corresponding to the MRI findings; 3-4 was negative as well as normal MRI at 3-4. An MRI performed on 12/15/00 showed diffuse bulging at 4-5 and 5-1, both of which caused stenosis. The remaining portion of the lumbar spine was normal. A discography performed 10/30/01 revealed a normal 3-4 disc, both in provocation and nucleomorphology. The 4-5 disc had normal uptake of volume but did create concordant pain. The 5-1 disc accepted increased volume with a resistance. Pressure measurements regarding low or high pressure provocation was not recorded but the neuroradiologist clearly reported that both 4-5 and 5-1 discs were painful, 5-1 more severe than 4-5. It was the decision of the surgeon to proceed with surgery at the 5-1 level only. There was no reported discussion in consideration of a two level fusion.

Remaining medical records submitted for perusal in regard to this request include perioperative information and physical therapy notes as well as hospital records.

REQUESTED SERVICE

A lumbar discogram with CT scan is requested for this patient.

DECISION

The reviewer agrees with the prior adverse determination.

BASIS FOR THE DECISION

The rationale and basis for this decision is simply that the 4-5 disc has already converted to a positive discography in the pre-operative testing, prior to the surgery performed. An MRI showed abnormalities with stenosis pre-operatively, 3-4 disc was normal on MRI and 3-4 disc was normal on pre-operative discography. There was no substantial improvement from this surgery in the post-operative period. The repeat discography was not felt to be necessary for the information is already known and repeat studies would only be considered a duplication of services. It is well known in spinal literature that once a motion segment is fused there is increased torque in the segments above and below and in this case the 4-5 level, which was abnormal and painful pre-operatively, one could expect a continuum of disease and one could also expect that repeat testing would not reveal any different information.

In review of the Caragee Studies as reported by the preauthorization physician, Dr. Caragee has submitted several studies regarding normal subjects reporting pain, subjects with psychological issues, secondary gain issues having unreliable reports. The former standards of spine surgery regarding fusion were somewhat limited to spinal instability

that have cascaded on to performing fusions for discogenic axial back pain. Evidenced based medicine regarding back surgery for back pain without instability or compressive changes is not supportive regarding long term improvement over non-operative or conservative care as published by the Cochran's Collaboration authored by Drs. Gibson and Waddell. There are other studies that show that surgical fusion may actually return the patient back to work sooner, but the end results over time pretty much even out. In this case the patient did have compression and did have concordant disc disease on provocation. Only the examining and treating physicians can offer an opinion regarding secondary gain issues as to whether the complaints of back pain were legitimate or dubious in nature. One can only assume that the patient and the physicians were honest and accurate in their assessments. The intended surgery was unsuccessful in obtaining a satisfactory outcome and the reasons are clearly revealed by pre-operative testing. There is report of stenosis at the level above at 4-5, which was already painful on pre-operative testing therefore repeat testing would not offer any additional information.

It is implied that the treating physicians and surgeons are contemplating extending the fusion to the 4-5 level. Therein lies the cascade of multiple spine surgeries, but in this case most likely is appropriate due to the compressive changes at the foramen previously reported.

It is unclear that repeat discography would be valid if negative and it appears safe to assume that it will continue to be painful by extrapolating the previous test results and the ongoing symptomatology. Repeat discography does not appear medically necessary for decision making in regard to further treatment, since as stated before the pathoanatomy has already been determined. Therefore, in recapitulation, due to the Caragee Studies, evidenced based medicine reviews and more importantly the results of testing already performed, it is not medically necessary to repeat discography and this reviewing physician is in agreement with the decision of the preauthorization process not to approve as medically necessary.

___ has performed an independent review solely to determine the medical necessity of the health services that are the subject of the review. ___ has made no determinations regarding benefits available under the injured employee's policy.

As an officer of ___, Inc, dba ___, I certify that there is no known conflict between the reviewer, ___ and/or any officer/employee of the IRO with any person or entity that is a party to the dispute.

___ is forwarding by mail and, in the case of time sensitive matters by facsimile, a copy of this finding to the treating doctor, payor and/or URA, patient and the TWCC.

Sincerely,

YOUR RIGHT TO REQUEST A HEARING

Either party to medical dispute may disagree with all or part of the 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 **10** (ten) calendar days of your receipt of this decision (28 Tex. Admin. Code 142.5(c)).

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 **20** (twenty) calendar days of your receipt of this decision (28 Tex. Admin. Code 142.5(c)).

This decision is deemed received by you 5 (five) days after it was mailed or the date of fax (28 Tex. Admin. Code 102.5(d)). A request for a hearing and a **copy of this decision** must be sent to:

Chief Clerk of Proceedings / Appeals Clerk
P.O. Box 17787
Austin, Texas 78744
Fax: 512-804-4011

The party appealing this decision shall deliver a copy of its written request for a hearing to other party involved in this dispute.

I hereby certify, in accordance with TWCC Rule 102.4 (h), that a copy of this Independent Review Organization decision was sent to the carrier, requestor, claimant (and/or the claimant's representative) and the TWCC via facsimile, U.S. Postal Service or both on this 21st day of May 2004.