

## NOTICE OF INDEPENDENT REVIEW DECISION

**Date:** May 4, 2004

**RE: MDR Tracking #:** M2-04-1150-01-SS  
**IRO Certificate #:** 5242

\_\_\_ has been certified by the Texas Department of Insurance (TDI) as an independent review organization (IRO). The Texas Workers' Compensation Commission (TWCC) has assigned the above referenced 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, 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 was reviewed.

The independent review was performed by a Neurosurgical reviewer (who is board certified in Neurosurgery) who has an ADL certification. The physician reviewer has signed a certification statement stating that no known conflicts of interest exist between him or her and any of the treating physicians or providers or any of the physicians 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 this case.

### **Clinical History**

This individual was apparently injured at work on \_\_\_. He injured his back and was subsequently treated conservatively. An MRI of the lumbar spine on 5/6/03 revealed essentially degenerative disc and joint disease in the lumbar area from L3-S1, but particularly was noted a disc herniation at L4-5 centrally. The patient was eventually seen by \_\_\_ who diagnosed him as having a disc herniation at L4-5 and chronic mechanical back pain. He doesn't indicate how the diagnosis of mechanical back pain came about, but he does note that the patient's pain was aggravated by walking, standing and such activities. The patient underwent a lumbar myelogram on September 12, 2003 which revealed evidence of disc disease at L4-5 with uncompromising spondylosis at L3-4 and L5-S1. On November 12, 2003, \_\_\_ performed a microdiscectomy at L4-5. Post-operatively the patient seemed to be doing satisfactorily, was neurologically normal and was increasing his activities. The patient was seen by \_\_\_ on January 15, 2004 reporting an accidental fall two weeks earlier. \_\_\_ noted the patient was having recurrent radiating pain into his right leg. An MRI on January 30, 2004 revealed further evidence of lumbar disc disease at L4-5 without aggravation of the previous findings at L3-4 and L5-S1. \_\_\_ saw the patient on February 23, 2004 indicating he had some weakness in his right foot and right great toe dorsiflexors. In March of 2004, he recommended discectomy and fusion because of the recurrent severe mechanical back pain and right leg pain.

### **Requested Service(s)**

L4-5 laminectomy with interbody fusion with instrumentation and purchase of LSO back brace for this claimant.

**Decision**

I agree with \_\_\_ recommendation for the patient to undergo repeat lumbar discectomy at L4-5 followed by instrumentation and the use of a back brace post-operatively.

**Rationale/Basis for Decision**

This patient, based upon \_\_\_ evaluation with previous mechanical back pain prior to the previous surgery with recurrent pain in his lower back following a fall, has evidence of neurological dysfunction involving the L5 root, which is associated with an L4-5 herniation on the right side, that dysfunction being the weakness of dorsiflexion of the foot and the great toe. This is the basis for decompressive surgery for recurrent herniated disc. In an interspace that has been previously operated upon, especially in the presence of mechanical pain, there is a high risk of further instability if there is not stabilization, such as with a fusion. The reviewers who indicate that there is a higher incidence of failure to fuse in a patient who is a smoker and that there may be deterioration at L3-4 and L5-S1 because of the presence of degenerative joint and disc disease at these locations are correct, however, those possibilities do not, in and of themselves, form the basis for rejection of a fusion at L4-5, which is indicated based upon clinical and radiographic findings.

**YOUR RIGHT TO REQUEST A HEARING**

Either party to this 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.