

July 15, 2004

MDR Tracking #:

M2-04-1433-01

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 is a request to review independently a failed attempt to the preauthorization process, to obtain authorization for a two level percutaneous discectomy, in treating a patient who has multifactorial back pain from an unnamed injury that was filed with Worker's Compensation on 12/10/02. Critical information regarding the injury, mechanism of injury, treatment for the injury and response to treatment is unknown. A complete history and physical examination regarding this patient's general health issues, psychosocial issues, work history is also not provided. There is clinical information from the requesting physician that a CT discogram was performed revealing positive pathology at all four levels tested on CT scan, only two were reported abnormal on provocation, at what is documented to be low pressure discography. The requester, \_\_\_, has sought the support of \_\_\_, a professor of Orthopaedic surgery, specializing in the spine, at \_\_\_. \_\_\_ has written a letter supporting this request, stating 'percutaneous discectomy at 3-4 and 4-5 is a reasonable approach' of this patient. The medical records are dated up to 5/14/04 in which it is reported that the request for percutaneous lumbar discectomy had been denied twice, and was considering medical dispute resolution in regard to further treatment. The medications at the time were Darvocet and Flexeril. There is no mention of anti-inflammatories. The physical examination on that date suggested that the patient maintained restricted range of motion, positive straight leg raise on the right at 45, on the left at 60, Patrick maneuver and Lasegue's signs were positive on the right only, motor and sensory was intact, reflexes were symmetric. Critical information states that the patient also has lumbar facet syndrome and sacroiliitis.

The only hint of treatment to date comes from a 3/1/04 RME submitted by \_\_\_. It was reported that this was an independent evaluation, where the patient had a CT scan, a myelogram, MRI, acupuncture, facet injection, and was seeing a chiropractor five days a week for

passive modalities of massage and heat, taking Darvocet and Flexeril, but still no mention of anti-inflammatories. It was noted on that exam that the patient had complaints of pain in his groin, thigh and knee pain. There was no critical analysis of co-morbidities, past medical history, surgical history, etc. The physical examination on that RME showed limitation of flexibility, no inappropriate behavior patterns in using Waddell testing, reflexes were intact, no pathologic reflexes and motor strength was symmetric. \_\_\_ opined that the ongoing back and leg pain was of unknown or uncertain etiology. The work sheet from \_\_\_'s office states that the diagnosis was a contained, grade III annular tear at L3-4 and L4-5 levels per discography, and a disc protrusion per CT myelogram at the 5-1 level, suggesting three level disease, only two levels being requested for treatment. A portion of the discography was submitted, page four was omitted, and with the CT scan post discography showed radial tears at all levels tested. Important to note is that there were 'marked facet arthrosis on the right at L4-5' which is ipsilateral to the leg complaints. It is unknown from these records whether facet blocks, medial branch blocks, and/or rhizotomies, have been offered, attempted or performed. As mentioned, independent review of MRI results, CT myelogram results, EMG/NCV results were not made available for review. A Worker's Compensation First Report of Injury was not submitted for critical information on hire date, and mechanism of injury.

#### REQUESTED SERVICE

Percutaneous lumbar discectomy at L3/4 and L4/5 is requested for this patient.

#### DECISION

The reviewer agrees with the prior adverse determination.

#### BASIS FOR THE DECISION

It is recommended that the request for a two level percutaneous lumbar discectomy remain non-authorized for treatment of back pain due to the lack of substantial information confirming the medical necessity. Again, as stated, the information submitted for independent review did not allow this reviewer to evaluate the CT myelogram report, MRI report, and nerve testing reports. It does not appear that the patient is undergoing treatment for inflammation. It does not appear that the patient is participating in an active exercise program, but was seeing chiropractic daily for passive modalities.

Discography as a tool to determine pain generators has been questioned by a series of studies, published by \_\_\_, and has confirmed the medical community to be sure of the indication for invasive treatment, and not rely solely on a test that may or may not be accurate, particularly in the population of concern Worker's Compensation, where there is always an issue of secondary pain, which is not to be assumed, but is to be in awareness. The requestor has stated that this patient has other pain generators, including the SI joint and facet joint. \_\_\_ has also reviewed two articles in his appeal, suggesting a study by Young & Tsou, that the outcome of percutaneous discectomy is comparable of traditional open trans-canal microdiscectomy. Another article, published by Mayer & Brock, suggested that percutaneous discectomy produced similar improvement in pain scale compared to surgical microdiscectomy.

These are single studies. The methodology of these studies is not important in this review.

It is also noted in several publications, such as Blue Cross Blue Shield of Texas which has a position statement that in the private sector percutaneous discectomy has a narrow window of indication in which there is an accepted window for coverage and that is essentially limited to single level disease for leg pain more than back pain. It is noted that IDET, nucleoplasty, annuloplasty are not eligible for coverage due to statements that it is considered experimental and investigational. Clinical Policy Bulletin produced by Aetna also expressed concern regarding this methodology. In reference to Evidence based medicine in the Cochrane's Collaboration of an article published by Drs. Gibson and Waddell in 2002, the same year as the studies referred to by Dr. Lall, that there was a low level of evidence for this procedure being recommended and should be regarded as experimental. An article with the Cochran Library published in 2003 by Drs. Gibson, Grant and Waddell also came to the conclusion that three trials of percutaneous discectomy provided moderate evidence that it produced poorer clinical outcomes than standard discectomy.

As a result, without knowledge of MRI findings, CT myelogram findings and nerve testing, and with the assumption that this patient has pain generators in the posterior elements of facets and sacroiliac joints and in consideration of evidence based medicine as published by the Cochrane's Collaboration, as well as with consideration of acceptable treatment in the State of Texas private sector, it is unclear that the burden of proof has been submitted and verified beyond anecdotal statements "that this patient would benefit short term/long term from the proposed procedure at multiple levels" (considering the desired benefits and associated risks.) Complete information regarding this patient's medical history and revelation of all diagnostics testing and confirmation of standard conservative care would be helpful to elucidate if an exception should be made in regard to general principals of caring for the injured worker, to why experimental and/or investigational treatment should be pursued. Although a second opinion was rendered that the treatment would be reasonable; in the pure sense of the meaning, it is unclear that the treatment is 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 \_\_\_, 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 15<sup>th</sup> day of July, 2004.**