

July 27, 2004

MDR Tracking #: M2-04-1556-01  
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

The patient is an approximately 50-year-old gentleman who reported an injury on \_\_\_ while working with a delivery person for a greenhouse. He lifted and twisted and felt a pop in his back with back and leg pain. He reported to his evaluating physician that he had never had back pain in the past, yet diagnostic imaging, including MRI, myelogram, and plain radiographs, show multilevel disease with some foraminal narrowing and mild canal stenosis, all of which appear degenerative in nature. There is no obvious injury pattern as reported on radiology reports. A variety of physicians have evaluated this patient throughout his care, including but not restricted to \_\_\_, \_\_\_, and \_\_\_, who have all recommended surgery. The patient has also been under the care of multiple pain physicians, psychologists. He is reported to have had up to five injections, which were ineffective. There have been a variety of surgeries recommended, including a one- or two-level decompression, up to a four-level arthrodesis, which is the current request.

Surgery was denied on two occasions by the reviewing physician who stated that a four-level fusion did not have a good prognosis in regard to evidence based medicine and Cochran's Collaboration reviews. Apparently in 11/03 the patient had an episode of incontinence and urinary frequency. It is implied by the records that this is related to his back, suggesting, without stating, Cauda Equina. With diagnostic studies over one year old and the reported use of up to 100 mg of hydrocodone a day, one might also assume that the urinary difficulties are related to his medication and not to any neurologic embarrassment.

Information not available for perusal in this request is nerve testing, discography or repeat diagnostics within the past year. It does not appear that the patient has had any recent supervised physical therapy and there is no documentation that the patient has been encouraged to participate

in an active exercise program or improve his chances of spinal healing, with or without surgery, by smoking cessation.

The onset of this patient's complaints is reported to be delivering plants; but he is also carpenter on the side. All examining physicians have recommended surgical intervention in this patient, including neurosurgeon, Orthopaedic surgeon, pain physician and psychologist.

#### REQUESTED SERVICE

Decompressive lumbar laminectomy, foraminotomy, posterolateral fusion with steffee pedicle screws, iliac crest bone graft, and posterior lumbar interbody fusion with branigan cages and dynagraft are requested for this patient.

#### DECISION

The reviewer disagrees with the prior adverse determination.

#### BASIS FOR THE DECISION

The \_\_\_ physician is in complete agreement with the reviewing physicians regarding evidence-based medicine and the medical necessity of surgery of this type in general. The literature would clearly support that the complication rate in spinal surgeries such as this can be up to 1 in 10 and that the patient's heavy smoking can compromise healing. Pain focused individuals with outstanding litigation or Workman's Compensation claims do poorly, relative to other types of patients, and in general a multilevel fusion is highly unpredictable in alleviating pain. Many spinal surgeons require instability or significant compressive changes to justify a major operation, using general principals that back surgery for back pain is unpredictable in alleviating back pain. The 11/03 report of this patient's bladder complaints is of concern, where the implication was that this was related to the spinal condition, yet it may also be related to high dose medication.

In general, evidence-based medicine regarding multilevel spinal surgery are concludes that the outcome is highly unpredictable and that some point in time the non-surgical and surgical patient have similar outcomes. On the other hand, there are studies that suggest that spinal surgery can allow for a quicker recovery and possible return to work. One might speculate that a 50-year-old patient with multilevel degenerative disease who is requiring high dose narcotics and smokes a pack of cigarettes per day carries a significant risk of an unsatisfactory outcome with a four-level fusion. This is a controversial subject that requires an heroic effort on the patient's part to recover, with a substantial investment from the third party regarding the overall cost of an undertaking such as this. It is easy to generalize a denial for four-level arthrodesis using evidence-based medicine, however, medicine is an art and a science, and all examining physicians have expressed opinions that this patient would benefit from the proposed surgery. Medical records submitted for perusal do not include an examining physicians opinion regarding the proposed surgery being inappropriate.

Since there is no information otherwise from examining or treating physicians this independent reviewer approves the request with the following comments: The surgery is purely elective and carries significant risk for complications; including, but not restricted to: persistent pain, infection, failure of fixation, pseudoarthrosis, and the probability of need for further surgery regarding the hardware. With regards to the comment that the patient has exhausted conservative

care, it is unclear, as there has been no active exercise program documented. One might further evaluate the bladder complaint to rule out narcotic neurogenic bladder, as opposed to Cauda Equina syndrome, if this is the basis for the surgery requested.

\_\_\_ 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 27<sup>th</sup> day of July, 2004.**