

July 29, 2004

MDR Tracking #: M2-04-1584-01

IRO #: 5284

\_\_\_ 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.

This case was reviewed by a licensed Doctor of Osteopathy who is board certified in Orthopedic Surgery. 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 43 year old female suffered a work related injury at \_\_\_ on \_\_\_ when she was moving a table and felt a pop in her low back and had immediate burning pain in her low back radiating to her right buttocks and down her right posterior thigh. Since that time she has see 11 doctors and she has received conservative care consisting of rest, narcotic medications, physical therapy for eight weeks, epidural injections and numerous diagnostic work up tests including x-rays of the low back, MRI, myelogram with CT scan, discogram and EMG and nerve conduction study. Throughout these nine months the patient has only had minimal relief from her discomfort.

According to \_\_\_, there was discussion of doing a discectomy at L4-5 and L5-S1 at an appropriate time, but this failed to materialize and more tests were carried out. The diagnostic work ups do show a herniated disk from an MRI on the right at L5-S1 affecting the nerve root and on all of the reports there is mild hypertrophy of the facets particularly L4-5 and L5-S1. She also underwent a psychoanalysis test that was reviewed and she was declared satisfactory for surgery. It appears on reviewing all of the records that all are pointing toward relief of having the disk replacement surgery. There is discussion through the 11 doctor's reports of the simple discectomy to a fusion. There records include \_\_\_, \_\_\_, \_\_\_, \_\_\_, \_\_\_, \_\_\_, \_\_\_, \_\_\_, \_\_\_, \_\_\_ and physical therapists of \_\_\_ and \_\_\_. In reviewing the reports there is some discussion of a degenerated lumbar disk at L4-5 and L5-S1 level, but never discussion as to there severity whether it be 5%, 10% or 90% compression of the disk space resulting in what type of spinal stenosis. There is only mention of a mild spinal stenosis with extension of the flexion extension x-rays.

There are also articles from \_\_\_ concerning the clinical results of the ProDisk from the European study and also the FDA approval of the artificial disk for Depui. Also from Financial News of FDA advisory panel unanimously recommends Depui spine Charite Artificial Disk for approval and also from the Internet of getADR.com, artificial disk replacement success stories.

#### REQUESTED SERVICE

The item in dispute is the prospective medical necessity of a disk replacement surgery.

#### DECISION

The reviewer disagrees with the previous adverse determination.

#### BASIS FOR THE DECISION

The reviewer states that in reviewing the ACOEM treatment guidelines that these guidelines are always behind the curve of new procedures and also in reviewing the clinical practice guidelines from the American Academy of Orthopedic Surgeons again these guidelines are always behind when looking at a Pain Physician Volume 4 #1 of 2001 where the patient has a failed back from all of the conservative care that has had the back and leg pain. After all of the work up, this patient has had along with all of the conservative care it always come down on the alga-rhythm of surgery. The use of an artificial disk has been used for approximately 20 years in Europe. It is not an investigational tool and has been downgraded with Medicare. The Texas Back Institute is a facility in the United States where the two types of artificial disks are being used.

\_\_\_ 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. \_\_\_ believes it has made a reasonable attempt to obtain all medical records for this review and afforded the requestor, respondent and treating doctor an opportunity to provide additional information in a convenient and timely manner.

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.

Sincerely,

#### **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.

In the case of prospective *spinal surgery* decision, a request for a hearing must be made in writing and it must be received by the TWCC Chief Clerk of Proceedings within 10 days of your receipt of this decision. (20 Tex. Admin. Code 142.5(c)).

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

This decision is deemed received by you 5 (five) 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 Worker's Compensation Commission, P.O. Box 40669, Austin, TX 78704-0012. A copy of this decision should be attached to the request.

The party appealing this decision shall deliver a copy of its written request for a hearing to all other parties involved in the dispute, per TWCC rule 133.308(t)(2).

Sincerely,

**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 30<sup>th</sup> day of July 2004.**