

April 4, 2005

Re: **MDR #:** M2-05-1113-01 **Injured Employee:**
 TWCC#:
 IRO Cert. #: 5055 **DOI:**
 SS#:

TRANSMITTED VIA FAX TO:

Texas Workers' Compensation Commission

Attention:
Medical Dispute Resolution
Fax: (512) 804-4868

REQUESTOR:

Kenneth Berliner, M.D.
Attention: Brenda Gonzalez
(281) 875-3285

RESPONDENT:

Truck Insurance Exchange
Attention: James Loughlin
(512) 343-1385

TREATING DOCTOR:

Amara Tea, D.C.
(713) 974-6044

Dear Mr. ____:

In accordance with the requirement for TWCC to randomly assign cases to IROs, TWCC assigned your case to IRI for an independent review. IRI has performed an independent review of the medical records to determine medical necessity. In performing this review, IRI reviewed relevant medical records, any documents provided by the parties referenced above, and any documentation and written information submitted in support of the dispute.

I am the Secretary and General Counsel of Independent Review, Inc. and I certify that the reviewing physician in this case has certified to our organization that there are no known conflicts of interest that exist between him and any of the treating physicians or other health care providers or any of the physicians or other health care providers who reviewed this care for determination prior to referral to the Independent Review Organization.

Information and medical records pertinent to this medical dispute were requested from the Requestor and every named provider of care, as well as from the Respondent. The independent review was performed by a matched peer with the treating health care provider. Your case was reviewed by a physician who is board certified in Orthopedic Surgery and is currently listed on the TWCC Approved Doctor List.

We are simultaneously forwarding copies of this report to the payor and the Texas Workers' Compensation Commission. This decision by Independent Review, Inc. is deemed to be a Commission decision and order.

YOUR RIGHT TO REQUEST A HEARING

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

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 twenty (20) days** of your receipt of this decision (28 Tex. Admin. Code 148.3).

This Decision is deemed received by you **five (5) 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 Workers' Compensation Commission, MS-48
7551 Metro Center Dr., Ste. 100
Austin, TX 78744-1609

A copy of this decision should be attached to the request. The party appealing the decision shall deliver a copy of its written request for a hearing to all other parties involved in the dispute.

I hereby verify that a copy of this Independent Review Organization (IRO) Decision was sent to the carrier, the requestor and claimant via facsimile or U.S. Postal Service from the office of the IRO on April 4, 2005.

Sincerely,

Gilbert Prud'homme
General Counsel

GP/thh

REVIEWER'S REPORT M2-05-1113-01

Information Provided for Review:

TWCC-60, Table of Disputed Services, EOB's
Information provided by Requestor:

Office notes 10/18/02 – 01/11/05

Physical therapy notes 02/13/04 – 01/11/05

Nerve conduction study 10/28/02
Radiology report 09/13/02
Information provided by Respondent:
Correspondence
Designated doctor reviews
Information provided by Spine Surgeon:
Office notes 06/09/04 – 02/16/04

Clinical History:

The patient suffered a work-related injury to the lumbar spine on ____ characterized by acute and eventual chronic low back pain with occasional leg symptoms. He was treated conservatively with physical therapy and pain medications; however, because of persistent pain, EMG and discography was performed. EMG was essentially negative; however, discography showed concordant pain at the L4/L5 level. Clinically, on the patient's physical examination, he was noticed to have weakness in the right EHL muscle and decreased sensation in the right L5 distribution. The patient was treated by Kenneth Burliner, M.D., as well as Dr. Ghadially, spine surgeon. Both surgeons recommended L4/L5, L5/S1 decompression and fusion because of persistent symptoms not responding to conservative care.

Disputed Services:

Lumbar anterior discectomy @ L4-5, interbody graft, anterior lumbar interbody fusion, interbody cage and inpatient stay of 3 days.

Decision:

The reviewer disagrees with the determination of the insurance carrier and is of the opinion that the procedures in dispute as described above are medically necessary in this case.

Rationale:

Indications for surgical treatment of lumbar discogenic disc pain include patient's who have had continued active non-surgical treatment for a minimum of 6 months. This patient has met this requirement. In addition, the MRI findings of disc degeneration have to be present, and this patient does have these findings with localized tenderness. Furthermore, the patient has positive discography at that level with a positive concordant pain response. Finally, with an extensive review of the medical records, the reviewer finds an absence of major influence of psycho-behavioral factors and symptom magnification in this patient.

There is an extensive chapter on lumbar discogenic pain and instability in the Orthopaedic Knowledge Update, Spine. This is the official stance of the American Academy of Orthopaedic Surgeons, and this patient appears to meet all of the criteria for surgical treatment of chronic lumbar discogenic pain. Therefore, this patient has met the requirements, and the surgery is medically necessary and reasonable.