

May 17, 2005

TEXAS WORKERS COMP. COMISSION
AUSTIN, TX 78744-1609

CLAIMANT: ___

EMPLOYEE: ___

POLICY: M2-05-1558-01 / ___

CLIENT TRACKING NUMBER: M2-05-1558-01-5278

Medical Review Institute of America (MRIOA) has been certified by the Texas Department of Insurance as an Independent Review Organization (IRO). The Texas Workers Compensation Commission has assigned the above mentioned case to MRIOA for independent review in accordance with TWCC Rule 133 which provides for medical dispute resolution by an IRO.

MRIOA 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. Itemization of this information will follow.

The independent review was performed by a peer of the treating provider for this patient. The reviewer in this case is on the TWCC approved doctor list (ADL). The reviewer has signed a statement indicating they have no known conflicts of interest existing between themselves and the treating doctors/providers for the patient in question or any of the doctors/providers who reviewed the case prior to the referral to MRIOA for independent review.

Records Received:

RECORDS RECEIVED FROM THE STATE:

Notification of IRO assignment dated 5/2/05, 7 pages

RECORDS RECEIVED FROM SPINE ASSOCIATES OF HOUSTON:

Letter of appeal from Spine Associates of Houston dated 3/15/05, 3 pages

Independent review completed by Independent Review Inc dated 2/7/05, 4 pages

Lumbar MRI 12/04/03, 1 page

EMG/NCS 12/18/03, 2 pages

Laboratory Reports 12/18/03, 2 pages

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Operative Report, Transforaminal Injection 12/31/03, 2 pages
Operative Report, Transforaminal Injection 01/21/04, 2 pages
Operative Report, Transforaminal Injection 02/04/04, 2 pages
Operative report Lumbar epidural injection 3/11/04, 2 pages
Operative Report, Facet Injections 04/22/04, 2 pages
Office Note, Dr. Francis 05/25/04, 08/31/04, 09/21/04, 10/07/04, 11/09/04, 11/29/04, 12/07/04,
01/08/05, 02/15/05, 03/15/05, 05/03/05, 14 pages
EMG/NCS 12/02/04, 2 pages
Lumbar CT/Myelogram 03/25/04, 3 pages

RECORDS RECEIVED FROM HARTFORD UNDERWRITERS INC.:

Preauthorization review response dated 12/8/04, 2 pages
Work status report dated 2/15/05, 1 page
Report of Medical Evaluation dated 12/22/04, 1 page
EMG Study preauth request from Spine Associates of Houston dated 11/15/04, 2 pages
Office Note, Dr. Francis 05/25/04, 08/31/04, 09/21/04, 10/07/04, 11/09/04, 7 pages
Operative Report, Facet Injections 04/22/04, 2 pages
Operative report Lumbar epidural injection 3/11/04, 2 pages
Lumbar CT/Myelogram 03/25/04, 3 pages
Operative Report, Transforaminal Injection 02/04/04, 2 pages
Operative Report, Transforaminal Injection 01/21/04, 2 pages
Operative Report, Transforaminal Injection 12/31/03, 2 pages
EMG/NCS 12/18/03, 2 pages
Lumbar MRI 12/04/03, plus 5 duplicate copies, 6 pages
Operative report Lumbar epidural injection 3/11/04, 2 pages
Office notes of Dr. Lai 03/01/04, 03/13/04, 03/26/04, 04/28/04, 05/10/04, 07/12/04, along with
several duplicate copies, 15 pages
Office notes unknown provider 11/19/03, plus duplicate copies, 6 pages
Letter from patient 05/29/04, 2 pages
Therapy notes 01/02/03, 11/20/03 to 12/22/03, 12/30/03 to 02/09/04, plus several duplicate
copies, 48 pages
Review Determination 09/14/04, 09/30/04, 11/17/04, 03/10/05, 03/28/05, 8 pages
Prescription for RS4-i 04/23/04, 1 page
Work Status Reports, some duplicates, 16 pages
Operative Report, Transforaminal Injection 12/31/03, plus duplicate copies, 7 pages
Operative Report, Facet Injections 04/22/04, plus duplicate copies, 6 pages
Operative report Lumbar epidural injection 3/11/04, plus duplicate copies, 8 pages
Operative Report, Transforaminal Injection 01/21/04, plus duplicate copies, 4 pages
Operative Report, Transforaminal Injection 02/04/04, plus duplicate copies, 11 pages
History and Physical, Dr. McKay 02/04/04, 2 pages
Office notes of Dr. Fraser 11/25/03 to 01/07/04, 01/23/04, 02/09/04, 05/25/04, 06/10/04,
07/16/04, 07/30/04, 8 pages
Ambulance Report 11/12/03, 1 page
Office notes of Dr. Nash 12/12/03, 12/18/03, 12/30/03, plus duplicates, 8 pages

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EMG/NCS 12/18/03, plus duplicates, 5 pages
Radiology Report 12/31/03, 1 page
Record Review, Dr. Brenman of Physicians Review Network 09/02/04, 5 pages
Emergency Department Report 11/12/03, 3 pages
Lumbar evaluation, 11/20/03, 2 pages
Anesthesia records, 3/11/04, 4/22/04, plus duplicates, 4 pages
Office notes, unknown provider, 1/23/04, 12/3/03, 6/10/04, 7/30/04, 7/16/04, 5 pages
Physician Orders, 12/9/03, 1 page
Work Status report, 11/23/04, 1 page
Intracorp report dated 9/8/04, 6 pages
Letter form Dr. Fraser 04/22/04, 1 page
Follow up office note, 3/1/04 1 page
P.T. Status report dated 1/9/04, 1 page
Hand written charge sheet, undated, 1 page
Hartford Physician Advisor Referral Form, 9/23/04, 1 page
Surgery & Custom Brace preauth request dated 9/22/04, 2 pages
Surgery Pre op Admission orders dated 8/31/04, 1 page
Office Notes from Dr. Francis 9/21/04, 8/31/04, 5/25/04, 4 pages
Doctors Imaging Center reports 3/25/04, 4 pages

Summary of Treatment/Case History:

The patient is a 43-year-old female who sustained a low back injury on _____. While working as a kindergarten teacher she was bending down to pick up a student when she felt a sharp pain and could not straighten back up. She was taken to the emergency department via ambulance. She was diagnosed with an acute lumbar strain and discharged with medications. The patient is noted to be a non-smoker. She is five feet four inches tall and weighs two hundred and four pounds. She was evaluated on 11/19/03 with findings of pain increased by motion and straightening of the lumbar lordosis. There were no motor or sensory deficits noted and the straight leg raises were negative. Lumbar radiographs revealed no disc narrowing or fracture. She was treated with a Medrol dose pack. She initiated physical therapy. On 11/20/03 her bilateral lower extremity strength was noted to be decreased. On 11/24/03 a therapy note indicated an onset of entire right side weakness over the weekend. On 12/04/03 the therapist noted an antalgic gait. Dr. Fraser, orthopedist, followed the patient for her right side and low back complaints. A lumbar MRI performed on 12/04/03 noted L5-S1 disc desiccation with a central herniation of 4.3 mm that significantly displaced the right nerve root, as well as mild facet hypertrophy. The patient was evaluated by Dr. Nash, neurologist, on 12/12/03. There was also notation of headaches and right facial numbness. Dr. Nash noted absent triceps reflexes and decreased sensation in the right lateral foot with a positive right straight leg raise. A neurological workup failed to identify a brain related or carotid cause for the patient's symptomatology. Electrodiagnostic studies completed on 12/18/03 were normal. Dr. Nash indicated the right lower extremity problems were most likely related to the L5-S1 disc pathology and referred the patient to pain management. The patient continued to attend physical therapy with notation of slow progress and limitations of motion. Dr. Nash also stated the patient appeared to be mildly depressed. The patient underwent a series of three epidural steroid injections on 12/31/03, 01/21/04 and 02/04/04. There is indication of some relief of the leg pain following the first injection with

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notation of increased radicular symptoms after the third injection. The patient also treated with Dr. Lai who had the patient undergo a selective nerve root block on 03/11/04 that failed to provide relief. A lumbar CT/myelogram completed on 03/25/04 identified a 5mm right sided L5-S1 herniated nucleus pulposus compressing the nerve root. She required emergency department treatment following the myelogram for a spinal headache. The patient then received a facet injection to L3-4, L4-5 and L5-S1 on 04/22/04. There is notation that the patient also treated with an RS4-i stimulator. She continued to take Hydrocodone. An independent medical evaluation conducted on 05/25/04 by Dr. Francis noted a positive right straight leg raise with significant S1 weakness and loss of sensation along the right dorsal and lateral foot. He recommended laminectomy and discectomy at L5-S1 with decompression of the right S1 nerve root. He noted the patient did not demonstrate any psychopathology. Dr. Francis did continue to treat the patient following the independent evaluation, as did Dr. Fraser. On 08/31/04, Dr. Francis indicated the patient had more back pain than leg pain that was significantly aggravated by flexion and extension. He again recommended localized fusion at L5-S1 with decompression. A record review performed by Dr. Brenman on 09/02/04 did not feel the patient was a surgical candidate. He expressed concern regarding the failure of the selective block to provide relief and identify a pain generator. A review determination completed on 09/14/04 stated that while there was evidence of radiculopathy, there was no evidence of segmental instability to warrant fusion. Dr. Francis appealed the denial due to the patient's continued pain and significant weakness. A repeat review from 09/30/04 noted the entrapped S1 nerve root, but again indicated no instability and failure of the S1 injection. It was felt the patient had no clinical indication for fusion. Dr. Francis again noted the sole abnormality at L5-S1 with normal discs at L3-4 and L4-5, activity related pain, and functional limitations. A fusion was recommended for the back pain and decompression for the leg pain. The patient now required the use of a brace and cane as the right lower extremity weakness was causing her to trip. There was a marked reproduction of back pain and right leg pain with straight leg raise noted. Repeat electrical studies were done on 12/02/04 and noted a chronic S1 radiculopathy. There is notation of an independent evaluation performed in late December 2004 or early January 2005 that concurred with Dr. Francis's recommendation for surgery. An independent review completed on 02/07/05 approved the recommended fusion surgery. On 02/15/05 Dr. Francis noted the patient's pain was increasing and was chiefly axial in nature. He noted that artificial disc replacement was now an option for this patient. He noted that artificial disc replacement would require less operative time, decreased hospital stay, less extensive physical therapy, and an earlier return to work. The request for total disc replacement was denied twice, on 03/10/05 and 03/28/05. Dr. Francis has appealed citing several articles supporting the use of artificial discs.

Questions for Review:

Please address medical necessity. Do not comment on any enclosed plan language

1. Please address prospective medical necessity of the proposed L5/S1 disc replacement, disc arthroplasty, regarding the above mentioned injured worker.

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Explanation of Findings:

1. Please address prospective medical necessity of the proposed L5/S1 disc replacement, disc arthroplasty, regarding the above mentioned injured worker.

It would not appear that the proposed L5–S1 disc replacement is medically necessary. The patient has documented herniated nucleus pulposus with neural compression on MRI which correlates with her symptomatology. Intravertebral disc replacement is an investigational procedure. While this may be an FDA approved prosthesis, it is clearly not mainstream orthopedics. There are no long term studies documenting the efficacy of this procedure or which show that people get any better with this procedure than do with more time proven procedures, such as fusion.

Conclusion/Decision to Not Certify:

The proposed L5–S1 disc replacement is not medically necessary.

Applicable Clinical of Scientific Criteria or Guidelines Applied in Arriving at Decision:

Tropiano P, Huang RC, Girardi FP, Cammisa FP, Marnay T: Lumbar Total Disc Replacement: Seven to Eleven Year Follow-Up. The Journal of Bone and Joint Surgery, Volume 87–A, Number 3, March 2005
Boden, Scott, Balderston, Richard et al. Disc Replacements: This Time Will We Really Cure Low Back and Neck Pain? JBJs 86:411–422 (2004).

The physician providing this review is board certified in Orthopaedic Surgery. The reviewer is a member of the American Academy of Orthopaedic Surgeons, the American Medical Association, the North American Spine Society, the Pennsylvania Medical Society, the Pennsylvania Orthopaedic Society, the American Association for Hand Surgery and is certified in impairment rating evaluations through the Bureau of Worker’s Compensation. The reviewer has publication experience within their field of specialty and has been in private practice since 1995.

MRIOA is forwarding this decision by mail, and in the case of time sensitive matters by facsimile, a copy of this finding to the treating provider, payor and/or URA, patient and the TWCC.

YOUR RIGHT TO REQUEST A HEARING

Either party to the 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 receiving the TWCC chief Clerk of Proceedings within ten (10) days of your receipt of this decision as per 28 Texas 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 as per Texas Admin. Code 102.4 (h) or 102.5 (d). A request for hearing should be sent to:

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Chief Clerk of Proceedings
Texas Workers' Compensation Commission
POB 40669
Austin, TX 78704-0012

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

It is the policy of Medical Review Institute of America to keep the names of its reviewing physicians confidential. Accordingly, the identity of the reviewing physician will only be released as required by state or federal regulations. If release of the review to a third party, including an insured and/or provider, is necessary, all applicable state and federal regulations must be followed.

Medical Review Institute of America retains qualified independent physician reviewers and clinical advisors who perform peer case reviews as requested by MRIOA clients. These physician reviewers and clinical advisors are independent contractors who are credentialed in accordance with their particular specialties, the standards of the American Accreditation Health Care Commission (URAC), and/or other state and federal regulatory requirements.

The written opinions provided by MRIOA represent the opinions of the physician reviewers and clinical advisors who reviewed the case. These case review opinions are provided in good faith, based on the medical records and information submitted to MRIOA for review, the published scientific medical literature, and other relevant information such as that available through federal agencies, institutes and professional associations. Medical Review Institute of America assumes no liability for the opinions of its contracted physicians and/or clinician advisors. The health plan, organization or other party authorizing this case review agrees to hold MRIOA harmless for any and all claims which may arise as a result of this case review. The health plan, organization or other third party requesting or authorizing this review is responsible for policy interpretation and for the final determination made regarding coverage and/or eligibility for this case.

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cc: requestor and respondent