

May 11, 2005

REBECCA FARLESS  
TEXAS WORKERS COMP. COMMISSION  
AUSTIN, TX 78744-1609

CLAIMANT: \_\_\_  
EMPLOYEE: \_\_\_  
POLICY: M2-05-1562-01  
CLIENT TRACKING NUMBER: M2-05-1562-01/5278

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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 from state:

- TWCC Notification of IRO Assignment, 04/27/05
- Medical Dispute Resolution Request/Response x2
- Table of Disputed Services- Back surgery
- List of treating physicians
- UniMed Direct LLC Review, 04/12/05
- UniMed Direct LLC Review, 04/14/05

Records from requestor:

- Letter To Whom It May Concern from \_\_\_\_, undated
- Fax cover letter to Debbie Weeks from Samantha K. Fenner/Amerisure Insurance, 11/12/04

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- Benefit Dispute Agreement, 01/21/05
- Letter To Whom It May Concern from Chester W. Jenkins, MD, 02/17/05
- UniMed Direct LLC Review, 04/12/05
- UniMed Direct LLC Review, 04/14/05
- History & Physical, Renato Bosita, MD, 08/09/04
- Radiology Review, Dr. Bosita, 08/09/04
- Follow-up progress report, Dr. Bosita, 10/06/04
- Exam, Francisco J. Battle, MD, 01/26/05
- Initial Patient Visit, Michael J. Bolesta, MD, 02/24/05
- Images, 09/27/04

Records from respondent:

- Letter to MRIOA from TWCC, 04/28/05
- Independent Medical Examination for Concentra Medical Examinations, Warren D. Long, Jr., MD, 10/25/04
- Addendum, Dr. Long, 12/01/04
- Addendum, Dr. Long, 12/22/04
- Letter to Dr. Long from David Swanson/Stone Loughlin & Swanson, LLP, 12/20/04

Records from insurance:

- Letter to MRI from David Swanson, 05/03/05
- Exam, Theodore Pearlman, MD, 05/03/05
- Letter to MRI from David Swanson, 05/02/05
- UniMed Direct LLC Review, 04/12/05
- UniMed Direct LLC Review, 04/14/05
- Medical Timeline
- Employer's First Report of Injury or Illness
- Soap notes, 06/26-07/1/02
- Employee's Notice of Injury or Occupational Disease and Claim for Compensation, 07/02/02
- Soap notes, 07/03-07/10/02
- X-ray report, 07/07/02
- Adult Form, 07/09/02
- Report of Medical Evaluation, 07/10/02
- Soap notes, 07/12-07/19/02
- Soap notes, 07/18/02
- McElroy Medical Clinic patient info, 07/26/02
- History & Physical, 07/26-08/08/02
- Christus St Michael Health Sys patient info, print screen
- MRI of the Lumbar Spine, 08/06/02
- PT Rx, 08/07/02
- History & Physical, 08/08-??/09/03
- Workers Comp Verification Sheet, 08/08/02
- PT Initial Evaluation, 08/12/02
- Patient Medical History, 08/12/02
- Consent for Care and Treatment/Financial Policy Statement, 08/12/02
- Daily Progress Notes, 08/12-08/16/02

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- Exercise Flowsheet, 08/12-08/22/02
- Daily Progress Notes, 08/19-08/22/02
- Authorization for Release of Medical and Employment Information, 08/12/02
- Daily Progress Notes, 08/27-08/29/02
- Exercise Flowsheet, 08/27-09/06/02
- Exam, J. Brett Dietze, MD, 09/03/02
- History & Physical, 09/3-??/04/02
- Daily Progress Notes, 09/04-09/6/02
- PT Progress Report, 09/05/02
- Pre-Authorization Intake Form, 09/05/02
- Daily Progress Notes, 09/09-09/12/02
- Exercise Flowsheet, 09/09-09/19/02
- Daily Progress Notes, 09/16-09/19/02
- Daily Progress Notes, 09/23-09/26/02
- Exercise Flowsheet, 09/23-10/02/02
- Daily Progress Notes, 09/30-10/02/02
- PT Progress Report, 10/02/02
- History & Physical, 10/08-10/25/02
- Designated Doctor Examination, G. Peter Fook, MD, 10/23/02
- TWCC-59 - Report of Medical Evaluation, 10/23/02
- Authorization for Release of Medical and Employment Information, 10/28/02
- History & Physical, 11/13/02
- Letter To Whom It May Concern from David S. McElroy, DO, 11/18/02
- History & Physical, 12/19/02
- Letter To Whom It May Concern from Dr. McElroy, 12/19/02
- Authorization for Release of Medical and Employment Information, ??/??/02
- History & Physical, James P. Michaels, MD, 01/20/03
- History & Physical, 01/20-01/29/03
- Letter To Whom It May Concern from Dr. McElroy, 02/04/03
- Letter to Dr. Fook from Pamela Fennell/TWCC, 02/05/03
- Concentra Managed Care Pre-Authorization Services report, 02/06/03
- History & Physical, 02/07-02/26/03
- Letter To Whom It May Concern from Dr. McElroy, 02/7/03
- Letter to Pamela Fennell from Dr. Fook, 02/10/03
- Concentra Managed Care Pre-Authorization Services report, 02/12/03
- Operative Report, James Michaels, MD, 02/17/03
- Post Injection Evaluation, 02/17/03
- History & Physical, ??/27-??/??/03
- Texas Workers' Compensation Work Status Report, 03/06/03
- History & Physical, ??/14/03
- Letter from Dr. McElroy, 03/20/03
- Return Office Visit, Dr. Michaels, 04/16/03
- Employee's Request to Change Treating Doctors, 04/28/03
- Concentra Managed Care Pre-Authorization Services report, 05/01/03

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- Cervical and Lumbar Myelogram report, 05/15/03
- Cervical CT Myelogram report, 05/15/03
- Lumbar CT Myelogram report, 05/15/03
- Flexion/Extension Lateral Lumbar Spine report, 05/15/03
- EMG/NCS Bilateral Upper Extremities report, 05/15/03
- Electrodiagnostic Results
- Return Office Visit, Dr. Michaels, 06/04/03
- X-ray Rx, 06/11/03
- X-ray schedule, 06/13/03
- Christus St Michael Health System patient info
- X-ray report, 06/13/03
- Exam, Chester W. Jenkins, MD, 07/09/03
- CT Scan of Sternum report, 07/21/03
- 47382, Admit date 07/23/03
- Letter to patient from Dr. Michaels, 08/19/03
- Office notes, Dr. Jenkins, 08/20-11/03/03
- Return Office Visit, Dr. Michaels, 08/25/03
- Vocational Rehabilitation Services Individualized Plan for Employment (IPE), 08/27/03
- Letter to Chester Jenkins from Shawna Lindsey, LPN Case Coordinator/Concentra, 11/11/03
- Office notes, Dr. Jenkins, 11/06-11/25/03
- Office notes, Dr. Jenkins, 12/12/03-02/06/04
- Employee's Request to Change Treating Doctors, 02/03/04
- Letter To Whom It May Concern from \_\_\_\_, 02/27/04
- Office notes, Dr. Jenkins, 03/05-05/19/04
- Medical Release/Physician's Statement, 04/01/04
- Authorization to Release Medical Information, 04/01/04
- Letter to Arati Gurav from Shawna Lindsey, 04/29/04 x2
- Letter to GENEX Services, Inc. from Bernie L. McCaskill, MD (review), 05/03/04
- Outpatient Summary Wadley Regional Medical Center, 05/06/04
- MRI of the Lumbar Spine report, 05/06/03
- MRI Cervical Spine report, 05/06/03
- Letter to GENEX Services, Inc. from Dr. McCaskill (review), 05/25/04
- Office notes, Dr. Jenkins, 06/11-08/06/04
- Letter to Arati Gurav from Shawna Lindsey, 06/18/04
- History and Physical, Dr. Bosita, 08/09/04
- Radiology Review, Dr. Bosita, 08/09/04
- Request for preauthorization, Dr. Bosita, 08/16/04
- Office notes, Dr. Jenkins, 08/20-09/22/04
- Behavioral Medicine Evaluation, Andrew R. Block, Ph.D., 08/31/04
- Letter to Concentra from Theodore Pearlman, MD (review), 08/31/04
- Letter to Dr. Jenkins from Dr. Block, 09/03/04 (second request 09/14/04)
- Behavioral Medicine Testing, Dr. Block, 09/10/04
- Letter to Besma Adawi from Dr. Pearlman, 09/14/04
- Staffing Update, Dr. Bosita, 09/15/04

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- Letter from Dr. Jenkins, 09/16/04
- Notice of Disputed Issue(s) and Refusal to Pay Benefits, 09/21/04
- Fax cover sheet to Karen Meyers from Texas Back Institute, 09/22
- Letter to Amerisure Insurance from \_\_\_\_, 09/23/04
- CT of Lumbar Spine report, 09/27/04
- Pain Management Procedure Report–Lumbar Discogram, 09/27/04
- Discogram Report, 09/27/04
- Images
- Peer Review Rebuttal, Dr. Bosita, MD, 09/28/04
- Letter To Whom It May Concern from Dr. Jenkins, 10/18/04
- Letter to GENEX from Dr. McCaskill, 10/22/04
- Independent Medical Examination for Concentra Medical Examinations, Dr. Long, 10/25/04
- Fax cover letter to Debbie Weeks from Samantha Fenner, 11/12/04
- Letter to \_\_\_ from Samantha Fenner, 11/02/04
- Addendum, Dr. Long, 12/01/04
- Notice of Disputed Issue(s) and Refusal to Pay Benefits, 12/7/04
- Addendum, Dr. Long, 12/22/04
- Initial Staffing Note, Dr. Bosita, 01/05/05
- Psychiatric Diagnostic Interview and Recommendations, Tommy Overman, Ed.D., 01/07/05
- Exam, Dr. Batlle, 01/26/05
- Physical Therapy Evaluation and Treatment Plan, Patricia A. Grantham, MS, PT, 02/07/05
- PT progress notes, 02/07/05, 02/08/05,
- Daily Progress Note–Behavior Medicine, 02/07/05, 02/08/05
- Pain Center Functional Activities Daily Note, 02/08/05
- Letter To Whom It May Concern from Dr. Jenkins, 02/17/05
- Initial Patient Visit, Dr. Bolesta, 02/24/05
- Established Patient Visit, Dr. Bolesta, 03/07/05
- Letter To Whom It May Concern from \_\_\_\_, undated
- Preauthorization Intake Form, 04/07/05
- Surgery schedule sheet/checklist
- UniMed Direct LLC Review, 04/12/05
- UniMed Direct LLC Review, 04/14/05

**Summary of Treatment/Case History:**

The claimant is a 41 year old male who sustained an injury to his lumbosacral region when dirt caved in on him at a construction site. The MRI of 8/6/02 was read as "relatively mild posterior disc bulge at the L5–S1 level with perhaps mild inferior foraminal narrowing". The 5/16/03 lumbar myelogram revealed L5 spondylolysis with a Grade 0 to 1 spondylolisthesis and no evidence of disc protrusion. The MRI of 5/6/04 revealed degenerative disc disease within the lower three intervertebral discs, but no evidence of foraminal stenosis. The exam by Dr. Bosita on 8/9/04 noted limited flexion of the lumbosacral region, but normal motor strength in the lower extremities and DTR's. On 10/6/04 tension signs were negative. The lumbar discogram of 9/7/04 noted degenerative disc changes and possible annular rents at L3–4, L4–5, and L5–S1. There was concordant pain at L4–5 and L5–S1. The claimant is seeing a psychiatrist for chronic pain and depression. He is obese (6'2" tall and weighs 293 lbs). He is addicted to tobacco products and has a history of significant alcohol intake.

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**Questions for Review:**

1. Please address prospective medical necessity of the proposed L4-L5, L5-S1 ALFU w Depuy Verigrift, L4-S1 PLF ICBG, Depuy w 3-4 day los, regarding the above-mentioned injured worker.

**Explanation of Findings:**

The claimant has no significant radiculopathy, instability, or compressive pathology on exam or on objective tests.

**Conclusion/Decision to Not Certify:**

1. Please address prospective medical necessity of the proposed L4-L5, L5-S1 ALFU w Depuy Verigrift, L4-S1 PLF ICBG, Depuy w 3-4 day los, regarding the above-mentioned injured worker.

The decision is to not certify the requested procedure as medically necessary.

There is no clear evidence that the claimant suffers from more than age onset degenerative disc disease and obesity related low back pain as well as psychiatric depression, tobacco addiction, and excessive alcohol intake. He is unlikely to benefit from operative intervention when one considers all these factors.

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

Without instability, there is no conclusive evidence that spinal fusion is of any significant benefit in treating low back pain.

The claimant has several negative factors which would preclude any elective spinal surgery including obesity, tobacco abuse, alcohol abuse, depression, and lack of significant objective pathology.

**References Used in Support of Decision:**

NEJM 350; February 12, 2002 page 723.  
Bronx et. al., Spine 2003;28: pages 1913-1921.

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The physician providing this review is board certified in Orthopedic Surgery. The reviewer also holds additional certifications from the National Board of Medical Examiners, the American Board of Orthopedic Surgery and their state Workers Compensation Commission. Professional Society memberships include the American Society for Laser Medicine and Surgery and the American College of Sports Medicine. The reviewer currently serves as an instructor in the department of surgery, division of orthopedics at a major medical teaching institution as well as participating in private practice. The reviewer has been in active practice since 1975.

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.

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## 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:

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 MRloA 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 MRloA 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 MRloA 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 MRloA 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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