



# PROFESSIONAL ASSOCIATES

## NOTICE OF INDEPENDENT REVIEW

**NAME OF PATIENT:**  
**IRO CASE NUMBER:** M2-05-1635-01  
**NAME OF REQUESTOR:**  
**NAME OF PROVIDER:** Richard A. Marks, M.D.  
**REVIEWED BY:** Board Certified in Orthopedic Surgery  
**DATE OF REPORT:** 07/06/05

Dear \_\_\_:

Professional Associates has been certified by the Texas Workers' Compensation Commission (TWCC) as an independent review organization (IRO). Texas Insurance Code Article 21.58C, effective September 1, 1997, allows a patient, in the event of a life-threatening condition or after having completed the utilization review agent's internal process, to appeal an adverse determination by requesting an independent review by an IRO.

In accordance with the requirement for TWCC to randomly assign cases to IROs, TWCC has assigned your case to Professional Associates for an independent review. The reviewing physician selected has performed an independent review of the proposed care to determine if the adverse determination was appropriate. In performing this review, the reviewing physician reviewed relevant medical records, any documents utilized by the parties referenced above in making the adverse determination, and any documentation and written information submitted in support of the appeal.

The independent review was performed by a matched peer with the treating physician. This case was reviewed by a physician reviewer who is Board Certified in the area of Orthopedic Surgery and is currently listed on the TWCC Approved Doctor List.

I am the Secretary and General Counsel of Professional Associates 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 providers or any

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of the physicians or providers who reviewed this case for determination prior to referral to the Independent Review Organization.

**REVIEWER REPORT**

**Information Provided for Review:**

A Patient Exam Sheet from Richard A. Marks, M.D. dated 06/29/04

An EMG/NCV study of the right lower extremity interpreted by Daniel Hopson, M.D. on 08/06/04

An MRI of the lumbar spine interpreted by Ellis Robertson, M.D. dated 10/01/04

A lumbar epidural steroid injection (ESI) procedure note from Margaret Hollar, D.O. on 11/10/04

A Required Medical Evaluation (RME) dated 03/09/05 from Radie F. Perry, M.D.

A lumbar discogram with post discogram CT scan interpreted by Michael Ginsburg, M.D. on 03/22/05

A clinic note from Huntly Chapman, M.D. dated 04/04/05

A preauthorization determination from CorVel dated 04/05/05

Another preauthorization determination from CorVel dated 04/14/05

A response from Texas Builder's Insurance Company to the IRO dated 05/26/05 from John Fowler

**Clinical History Summarized:**

Dr. Marks evaluated the claimant on 06/29/04. On 08/06/04, Dr. Hopson performed an EMG/NCV study of the right lower extremity, which was abnormal and revealed S1 radiculopathy. An MRI of the lumbar spine on 10/01/04 revealed a 2 to 3 mm. disc bulge at L4-L5 with mild facet arthropathy. There was a broad based disc protrusion at L5-S1. On 11/01/04, Dr. Hollar performed an ESI at L4-L5. Dr. Perry performed an RME on 03/09/05 and felt the claimant's symptoms were due to the original injury and he had failed back syndrome. He also noted the claimant did have preexisting degenerative disc disease. He questioned the use of Hydrocodone, but felt an anti-inflammatory would be appropriate. Dr. Perry also recommended a discogram. The claimant underwent a lumbar discogram with post discogram CT scan on 03/22/05, which revealed diffuse grade IV tears at L4-L5 and L5-S1 associated with broad based

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bulges. On 03/29/05, Dr. Marks reviewed the discogram and he recommended a transcutaneous disc resection at L4-L5 and L5-S1. The risks and benefits were discussed with the claimant and he wished to proceed. Dr. Chapman evaluated the claimant on 04/04/05 and recommended a spinal fusion, but felt the claimant needed to stop smoking first. Therefore, he felt something less invasive would be appropriate. On 04/05/05, CorVel provided a preauthorization note that denied the claimant's transcutaneous disc resection as there was no mass effect on the nerve roots or thecal sac that warranted decompression surgery. On 04/14/05, CorVel provided another preauthorization note, which stated the reconsideration for the transcutaneous resection was denied.

**Disputed Services:**

A transcutaneous disc resection at L4-L5 and L5-S1

**Decision:**

The transcutaneous disc resection was neither reasonable nor necessary as related to the original injury. Therefore, I agree with Texas Builders Insurance in regard to the disputed service.

**Rationale/Basis for Decision:**

The indications for transcutaneous disc resection includes unilateral leg pain, paresthesias, a positive straight leg raising sign, neurological findings, lack of improvement after acceptable conservative care, a positive MRI or other study that showed a subligamentous nuclear herniation. This claimant was seen by Radie F. Perry, M.D. on 03/09/05, and it was Dr. Perry's opinion that the claimant had minimal objective findings with subjective pain complaints that were out of proportion to the physical findings. The claimant was seen by Huntley G. Chapman, M.D. on 04/04/05. Dr. Chapman felt the claimant was not an appropriate spinal fusion candidate because she smoked. Dr. Chapman furthermore allowed that a spinal fusion was the gold standard in the instance and that the claimant should not receive a spinal fusion because of his smoking. It has also been pointed out that this claimant has significant emotional disease, including paranoia and depression.

Transcutaneous lumbar discectomy is not indicated for claimants with internal disc derangement or internal disc disease. The only article in support of such a procedure was Dr. Marks' own article that was published in the Southern Medical Journal in September of 2000. This was not a peer-reviewed journal in the sense of Journal of Bone and Joint Surgery, The Journal of Spine or

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any of the other acceptable major referee sources we find acceptable in the literature. Dr. Marks own success rate was 83%, but there was no objective testing in this article demonstrating how a successful result was reached. If a claimant was a bad candidate for a fusion procedure, he would be a bad candidate for surgery in general. Whether the claimant smoked or not, there was evidence of symptoms magnification and evidence of severe emotional disease. There was no documented evidence to support the use of this procedure for this indication. In conclusion, I do not believe the proposed transcutaneous disc resection at L4-L5 and L5-S1 would be reasonable or necessary and should not be performed.

This review was conducted on the basis of medical and administrative records provided with the assumption that the material is true and correct.

This decision by the reviewing physician with Professional Associates 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) calendar days** of your receipt of this decision (28 Texas Administrative Code 142.5c).

**If disputing other prospective medical necessity** (preauthorized) 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) calendar days** of your receipt of this decision (28 Texas Administrative Code 142.5c).

This decision is deemed received by you **five (5) calendar days** after it was mailed (28 Texas Administrative 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., Suite 100  
Austin, TX 78744-1609

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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's decision was sent to the respondent, the requestor, TWCC and the claimant via facsimile or U.S. Postal Service from the office of Professional Associates.

Sincerely,

Lisa Christian  
Secretary/General Counsel