

June 7, 2005

**Re: MDR #:** M2-05-1641-01 **Injured Employee:**  
**TWCC#:** **DOI:**  
**IRO Cert. #:** 5055 **SS#:**

**TRANSMITTED VIA FAX TO:**  
**Texas Workers' Compensation Commission**  
Attention:  
Medical Dispute Resolution  
Fax: (512) 804-4868

**RESPONDENT:**  
United States Fidelity & Guaranty  
c/o ESIS (TPA)  
Attention: Shelley Smith  
(972) 465-7591

**TREATING DOCTOR:**  
Luis Duarte, MD  
(325) 481-2394

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 June 7, 2005.

Sincerely,

Gilbert Prud'homme  
General Counsel

GP/th

**REVIEWER'S REPORT  
M2-05-1641-01**

**Information Provided for Review:**

TWCC-60, Table of Disputed Services, EOB's

Information from Respondent:

Correspondence

Designated doctor reviews

Information from Treating Doctor:

Office notes 02/24/04 – 03/01/05

FCE 02/22/05

Nerve conduction study 01/16/04

Operative reports 03/29/04 – 01/24/05

Radiology reports 07/10/02 – 05/02/05

**Clinical History:**

The male patient suffered a work-related injury to the lower back with discogenic pain at L3/L4 and L4/L5. He had positive discography that gave a concordant response, and he failed conservative measures. Surgery has been requested including an L3/L4 interbody fusion and L4/L5 fusion versus arthroplasty. This has been denied by the insurance company as medically unnecessary.

**Disputed Services:**

One day inpatient stay and posterior lumber interbody fusion @ L4-5, L3-4, LSO brace and possible total spine arthroplasty @ L4-5.

**Decision:**

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

**Rationale:**

This patient has lumbar discogenic disc disease with a positive discogram. He has failed conservative management, and the designated doctor examinations have confirmed this patient's symptoms, both subjectively and objectively. In addition, Dr. Simonsen's report from 08/11/04 states that he may be a candidate for surgery if the discogram was concordant. The discography was helpful, and therefore, the patient is a surgical candidate. The proposed surgery is reasonable based on current medical standards of spine surgery.