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NOTICE OF INDEPENDENT REVIEW DECISION

Date: September 23, 2005

Requester/ Respondent Address:

DWC
Attention: Gloria Covarrubias
7551 Metro Center Drive, Suite 100, MS-48
Austin, TX 78744-1609

Robert Myles, MD
Attn: Kari
Fax: 817-282-7934
Phone: 817-282-0917

Gene J. Couturier, DC
Fax: 817-429-6021
Phone: 817-429-6010

City of Irving c/o Harris & Harris
Attn: Robert Josey
Fax: 512-346-2539
Phone: 512-346-5533

RE: Injured Worker:

MDR Tracking #: M2-05-2245-01
IRO Certificate #: IRO 5263

Forté has been certified by the Texas Department of Insurance (TDI) as an independent review organization (IRO). The Division of Workers' Compensation (DWC) at the Texas Department of Insurance has assigned the above referenced case to Forté for independent review in accordance with DWC Rule §133.308 which allows for medical dispute resolution by an IRO.

Forté has performed an independent review of the proposed care to determine if the adverse determination was appropriate. In performing this review, 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 was reviewed.

The independent review was performed by an Orthopedic reviewer (who is board certified in orthopedic surgery) who has an ADL certification. The physician reviewer has signed a certification statement stating that no known conflicts of interest exist between him or her and any of the treating physicians or providers or any of the physicians or providers who reviewed

the case for a determination prior to the referral to for independent review. In addition, the reviewer has certified that the review was performed without bias for or against any party to this case.

Submitted by Requester:

- Initial consultation on 9/14/03 by Dr. Myles
- Letter of rebuttal dated 5/17/04 by Dr. Couturier, chiropractor
- CT scan of the lumbar spine dated 5/17/04
- Imaging study reports dated 5/17/04 including x-rays of the lumbar spine, CT scan of the head, reconstructions of the cervical spine, x-rays of the chest, x-rays of the pelvis
- Dr. Couturier's clinic note dated 5/28/04
- Orthopedic surgery note dated 7/22/04 by Dr. Crowell, orthopedic surgeon
- MRI report of the lumbar spine dated 8/11/04
- Clinic notes by Dr. Maribel, neurologist, dated 9/27/04
- EMG/NCV studies of the lower extremities dated 10/5/04
- Clinic note by Dr. Myles dated 10/28/04
- Procedure report of lumbar epidural steroid injection at L5-S1 dated 11/4/04 and 1/20/05
- CT scan report of the lumbar spine dated 12/8/04
- Clinic report by Dr. Maribel, neurologist, dated 12/13/04
- Clinic report by Dr. Couturier, chiropractor, dated 3/8/05
- Clinic note by Dr. Maribel, neurologist, dated 3/14/05
- CT scan report of the lumbar spine with and without contrast dated 4/26/05
- Lumbar myelogram report dated 4/26/05

Submitted by Respondent:

- Clinic report by Dr. Myles dated 9/14/03
- RUR reviews by Dr. Twomey, internal medicine, dated 8/10/04
- Medical record review by Dr. Twomey dated 1/26/05
- Film review by Dr. Watters on 2/8/05
- Medical record review by Dr. Twomey dated 2/24/05
- Attorney letter representing the City of Irvine dated 8/24/05
- Denial of authorization for surgery dated 6/14/05 and 6/23/05

Clinical History

On ____, the patient was walking on a plank when he fell through the platform in the ceiling and was caught by his arms and his left leg. The patient had symptoms of low back pain with radiation to his left lower extremity. The patient had a pre-existing condition in 1980 when he had low back surgery including L3-4 fusion. His clinical evaluation including clinical examinations, CT scan of the lumbar spine, MRI of the lumbar spine, EMG/NCV studies, and post myelogram CT scan of the lumbar spine showed L3-4 fusion with L4-5 disc bulge and disc protrusion and osteophytes and uncovertebral hypertrophy causing bilateral neural foraminal

canal stenosis. The patient has had lumbar epidural steroid injections times two without relief of his symptoms. On 4/26/05, CT scan of the lumbar spine showed L4-5 broad based disc bulge with narrowing of the left side neural foramen and L5-S1 with decreased filling of the left side L5 nerve root. There is evidence of anterior and posterior osteophytes. There was no evidence of central canal stenosis.

Requested Service(s)

Lumbar fusion, anterior and posterior with instrumentation at L3-4 and L4-5 with five (5) days inpatient length of stay

Decision

I agree with the carrier that the requested services are not medically necessary.

Rationale/Basis for Decision

The patient incurred injury on ___ when he fell through a platform ceiling. The clinical workup showed a fusion at the L3-4 level with no evidence of neurocompression at the L4-5 level. Given the complexity of this case and the pre-existing condition of previous lumbar surgery prior to the date of injury on ___, I recommend a required medical examination with a fellowship trained spine surgeon be done for a second opinion to reassess the patient's symptoms and to determine if the patient would be a candidate for the procedure as requested. Based on the documentation available for review, the patient does not have enough focal pathology at the L4-5 level that is related to the work injury as described on ___ to be a candidate for the procedure as requested. His pathology at the L4-5 level is due to the preexisting condition of degenerative disc disease of the lumbar spine.

YOUR RIGHT TO APPEAL

If you are unhappy with all or part of this decision, you have the right to appeal the decision. The decision of the Independent Review Organization is binding during the appeal process.

If you are disputing the decision (other than a spinal surgery prospective decision), the appeal must be made directly to a district court in Travis County (see Texas Labor Code §413.031). An appeal to District Court must be filed not later than 30 days after the date on which the decision that is the subject of the appeal is final and appealable. If you are disputing a spinal surgery prospective decision, a request for a hearing must be in writing and it must be received by the Division of Workers' Compensation, Chief Clerk of Proceedings, within ten (10) days of your receipt of this decision.

Chief Clerk of Proceedings / Appeals Clerk
P.O. Box 17787
Austin, Texas 78744

Fax: 512-804-4011

The party appealing this decision shall deliver a copy of its written request for a hearing to other party involved in this dispute.

In accordance with Commission Rule 102.4(h), I hereby verify that a copy of this Independent Review Organization (IRO) Decision was sent to the patient, the requestor, the insurance carrier, and DWC via facsimile or U.S. Postal Service from the office of the IRO on this 23rd day of September 2005.

Signature of IRO Employee:

Printed Name of IRO Employee: Denise Schroeder