

# MCMC

## IRO Medical Dispute Resolution M2 Prospective Medical Necessity IRO Decision Notification Letter

<b>Date:</b>	<b>10/04/2005</b>
<b>Injured Employee:</b>	
<b>Address:</b>	
<b>MDR #:</b>	<b>M2-05-2312-01</b>
<b>TWCC #:</b>	
<b>MCMC Certification #:</b>	<b>IRO 5294</b>

### REQUESTED SERVICES:

#### Please review for:

22852 Removal of Post Instrumentation,  
22830 Exploration Fusion,  
Please review the item(s) in dispute:  
63090 Anterior Discectomy L4-5, L5-S1,  
22851 Peak Cage L4-5, L5-S1, 22558 ALIF L4-5, L5-S1,  
20936 Bone Graft,  
22612 Posterior Lateral Fusion L4-5, L5-S1,  
22842 Post Segment Instrumentation,  
63042 Revision Decompression Left L4-5, L5-S1.

### DECISION: Upheld

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IRO MCMC llc (MCMC) has been certified by the Texas Department of Insurance as an Independent Review Organization (IRO) to render a recommendation regarding the medical necessity of the above disputed service.

Please be advised that a MCMC Physician Advisor has determined that your request for an M2 Prospective Medical Dispute Resolution on 10/04/2005, concerning the medical necessity of the above referenced requested service, hereby finds the following:

The denial of the pre-authorization of the described spinal operation should be upheld.

### CLINICAL HISTORY:

This 43-year-old female allegedly twisted her ankle on \_\_\_ when she slipped as she went to step on a ledge to "pull the chicken from the front to the back". She claimed to have landed on her hip. The first record is dated 10/11/2002 when she complained of numbness in the left leg and claimed to be unable to walk.

The nerve conduction velocity studies (NCV) of both lower extremities (LE's) dated 10/23/2002 showed bilateral peroneal and sural dysfunction and the final analysis was that she had a "hyperesthetic

condition which inconsistent with low back pain (LBP) and radiculopathy". This is not the standard format of reporting the findings of a NCV study.

The MRI of 11/13/2002 revealed a central herniated nucleus pulposus (HNP) at T11/12 with compression of the conus, a diffuse disc bulge at L3/4 and L4/5 with facet and ligamentum hypertrophy at L4/5, hypertrophy resulting in bilateral foraminal narrowing, and a mild bulge at L5/S1 with mild foraminal narrowing.

The injured individual had extensive chiropractic care and was referred to Dr. Pervez for pain management on 11/08/2002. She continued to receive chiropractic care and physical therapy (PT) with passive modalities. The initial evaluation by Dr. Pervez does not document objective clinical findings of organic disease related to the alleged injury. She was taking Vicodin, Soma and Paxil. Dr. Esses evaluated her on 02/10/2003 and recommended epidural steroid injections (ESI's). She had no objective clinical focal or localizing findings of a specific pathological lesion. She continued to be treated with medications, injections and therapy despite the absence of specific objective clinical findings of an organic lesion.

**RATIONALE:**

The x-rays of 04/24/2003 revealed lumbar spondylosis predominantly at L5/S1. The myelogram of the same date revealed minimal ventral epidural defect at L3/4 and L4/5 with underfilling of the roots at L4/5; and posterior bony ridging with a small indentation of the thecal sac and underfilling of the right nerve root at L5/S1 level. The post-myelogram CT scan revealed diffuse annular bulge at L4/5 with hypertrophy of the facet joints and ligamentum flavum with borderline central stenosis with underfilling of both nerve roots; spondylosis at L5/S1 with significant foraminal encroachment more on the right encroaching on the L5 nerve root.

The electromyogram (EMG)/nerve conduction velocity studies (NCV) studies of 05/12/2003 revealed radiculopathy of bilateral L5 and S1 nerve roots. A discogram done on 05/22/2003 revealed extravasation of contrast at L4/5 with evidence of annular tears. Similar findings were noted at L5/S1 with concordant pain at both levels. There was evidence of bilateral foraminal stenosis. Based on the discogram findings Dr. Esses recommended decompression and fusion L5 to S1.

On 06/10/2003 she underwent placement of pedicle screw instrumentation from L4 to S1. The operative note describes the indications for surgery as spinal stenosis, facet hypertrophy, degenerative disc disease (DDD) from L4 to S1. However the decompression for the spinal stenosis is described in eight words; "a very liberal decompression was now carried out". There is no description of the appearance of the canal and the foramen and nerve roots, neither is there a description of the exact procedure carried out to achieve this decompression.

On 09/18/2003 she complained of increased back and leg pain, however, there were no objective clinical findings to substantiate the validity of these complaints. She was said to have weakness of the left extensor, hallucis longus tendon. A CT scan on 10/13/2003 revealed the instrumentation to be in place, but the fusion had not yet consolidated, evidence of previous decompression at L4/5 without significant canal stenosis but mild lateral recess narrowing.

There was posterior ridging with foraminal narrowing and deformation of the nerve root similar to that noted on the preoperative myelogram/CT scan.

She continued to be treated with physical therapy and passive modalities including massage. Per Dr. Pervez she was still complaining of pain and the therapy was not helping to alleviate her symptoms. On 01/04/2004 Dr. Esses believed that x-rays revealed "ample bone in the lateral gutter, going on to a mature fusion". On 01/26/2004 she was tender at the thoracolumbar junction. Dr. Esses now believed that the herniated disc at T10/11 noted on the first MRI study was in fact the cause of her continued complaints. The surgery had not alleviated her symptoms. She was given ESI to alleviate her pain despite no objective clinical evidence of findings to substantiate the use of an ESI.

The EMG/NCV studies of 05/12/2004 did not reveal any specific radiculopathy. The changes in the lumbar paraspinal muscles were most likely secondary to the surgical intervention. The CT scan of 06/04/2004 revealed the instrumentation to be in place. There was no evidence of a consolidation of the fusion. There was a laminotomy at L4/5 with bulging epidural fibrosis suggestive of a recent protrusion; and spondylosis with significant disc space narrowing at L5/S1 with posterior bony ridging extending into the foramina more on the right where it is in contact with the right L5 nerve root.

The MRI of the thoracic spine on 06/10/2004 revealed a large protruding or bulging disc at T10/11. Dr. Pervez continued to treat her with medications, therapy and injections, despite the absence of objective clinical findings of a specific pathological entity and without any evidence of decrease of her symptoms. On 06/21/2004 based on tenderness at the thoracolumbar region, and complaints of her left leg giving way, Dr. Esses ordered a discogram.

On 07/02/2004 she complained of pain radiating to both her lower extremities with numbness and tingling. She claimed to have more muscle spasms, rigidity and decreased range of motion (ROM). Once again ESI's were recommended despite the absence of a specific dermatomal distribution of pain and despite the absence of objective clinical findings of radiculopathy. On 08/13/2004 she complained of increased burning sensation in her mid and low back with nausea and significant pain".

The next few office visits to different specialists all note her complaints of "significant degree of discomfort" in the thoracic region. Dr. Strausser evaluated her on 10/09/2004 and noted the presence of signs of symptom magnification and pain behaviors. She was grimacing and groaning when lying on the table but was able to get on and off the table without any discomfort or hesitation. She was apparently taking an "inordinate" amount of narcotic pain medication.

Dr. Blair performed an independent medical exam (IME) type evaluation. Based on the documentation in the medical records of the patient since the date of the alleged injury, the IME concluded that there had been few if any objective clinical or imaging findings to substantiate any of the tests and treatment she had received.

Dr. Berliner evaluated the injured individual on 04/18/2005 for complaints of numbness in her left big toe and shooting pains down her left leg. She stated that her back pain was at a 6-7/10 level. Dr. Berliner describes her to be "well developed, well nourished female". Her weight is said to be 204 pounds but none of the records document her height. She was said to walk with an "antalgic gait". Straight leg raise (SLR) was said to be positive on the left but no details of the pain elicited are provided. There is also no documentation of the degree of flexibility of this injured individual and level of general conditioning.

Muscle strength was 4/5 in the left evertors and zero in the left great toes extensor. Toe flexors were said to be 1/5 on the left and she apparently had diminished sensation along the left L5 distribution. The Thoracic MRI was said to reveal a "sizeable disc herniation at T10/11, and the CT scan of the same date allegedly revealed pseudoarthrosis. The nerve roots were not well visualized because of the absence of a myelogram. The EMG/NCV studies of 05/12/2004 were read as showing L5 and S1 radiculopathy. Dr. Berliner recommended redo lumbar fusion and then a discectomy and fusion at T10/11.

She returned on 06/06/2005 and based on the previous information alone the same recommendations were made to the injured individual. The hardware would be removed first followed by the anterior interbody fusion from L4 to S1 level. When the lumbar lordosis was established she would be flipped over once again to insert the pedicle screw instrumentation.

The submitted clinical data and the reports of the various diagnostic studies have failed to substantiate the need for this extensive procedure. Furthermore, the first operation was not substantiated by the results of the various imaging studies. In addition the injured individual was documented as having nonanatomical and non-physiological complaints, as well as several instances of symptom magnification. She is also overweight. It would be in her best interests to lose weight, enroll in a well-defined conditioning program of back stabilization/postural, stretching and strengthening exercises.

In addition she would need to obtain a job to facilitate her recovery. Most importantly the procedures recommended are not substantiated by objective clinical data. Her complaints are not commensurate with the imaging findings and there is a great deal of discrepancy between the clinical findings noted by Dr. Berliner and the other specialists who have evaluated her.

**RECORDS REVIEWED:**

- TWCC Notification of IRO Assignment dated 08/04/05
- TWCC MR-117 dated 07/19/05
- TWCC MR-100 dated 07/19/05
- TWCC-21 Payment of Compensation or Notice of Refused/Disputed Claim dated 05/29/03
- TWCC-60
- TWCC-69 Report of Medical Evaluation
- TWCC-73 Work Status Reports dated 05/16/0308/26/04, 06/06/05, 04/18 and one undated
- TWCC letter dated 12/03/04
- TWCC-22 dated 05/07/03

- MCMC: IRO Medical Dispute Resolution M2 Prospective Pre-Authorization dated 08/04/05
- Ann Gulley: Memos dated 08/10/05 (two), 06/16/05, 09/14/04, 09/03/04, 07/19/04
- Brenda Davis: Memo dated 08/08/05
- Memorial MRI & Diagnostic: CT lumbar spine dated 07/28/05
- Lonestar Orthopedics: Review Form dated 07/07/05
- Corvel: Pre-Authorization Determinations dated 07/20/05, 07/05/05, 06/21/05, 10/29/04, 10/15/04, 09/15/04, 07/20/04, 06/03/04, 06/02/04, 04/21/04, 12/23/03, 09/26/03, 06/13/03, 06/06/03
- Lonestar Orthopedics: Orthopedic Reports dated 06/06/05, 04/18/05 from Kenneth Berliner, MD
- Robert S. Williams, MD: Letter dated 05/29/05
- Kenneth G. Berliner, MD: Lumbar, Thoracic and Ribs x-rays dated 04/18/05
- RMJ Evaluations: Letter of Clarification dated 01/25/05 from Milton Kirkwood, DO
- TWCC: Letter dated 01/07/05 (first page only)
- RMJ Evaluations: Report of Medical Evaluation from Milton Kirkwood, DO dated 12/28/04
- The Medical Equation: Letter dated 12/29/04 from Brian Buck, MD
- RMJ Evaluations: Review of Medical History & Physical Exam dated 12/22/04 from Milton Kirkwood, DO
- Susan Stewart, RN, BSN: Designated Doctor Summary dated 12/08/04
- Handwritten doctor's note dated 11/22/04
- Pain & Headache Clinic: Initial Evaluation dated 10/28/04 from Sady Ribeiro, MD
- Occupational Orthopaedics Specialists: Peer Review dated 10/12/04 from William Blair, Jr., MD
- The Woodlands Sports Medicine Centre: Letter dated 10/09/04 from David Strausser, MD
- Northwest Spine and Joint: Letter dated 10/05/04 from J. Michael Graham, MD
- Behavioral Healthcare Associates: Clinical Interview dated 09/29/04 from Karen Krause, PhD
- Physical Medicine & Rehabilitation: Documentation for phone conferences dated 09/07/04, 09/02/04
- Behavioral Healthcare Associates: Psycho diagnostic Testing dated 09/21/04 from Cindy Thornby, MA and Karen Krause, PhD
- Baylor College of Medicine: Letter dated 09/13/04 from Dr. Esses with handwritten note dated 10/12/04 from Brenda, Adjuster
- Physical Medicine and Rehabilitation: Letters dated 09/10/04, 06/02/04, 04/23/04 from William Langeland, DC
- Consultation Preparation dated 09/09/04 (first page only)
- Stephen Esses, MD: Follow-up Visit notes dated 08/26/04, 08/14/03, 06/30/03, 05/29/03, 04/03/03
- Summit Ambulatory Surgical Center: Operative Reports dated 08/19/04, 01/15/04 from K. Bobby Pervez, MD
- Summit Ambulatory Surgical Center: Anesthesia Record dated 08/19/04
- Northwest Spine and Joint: Letter dated 07/29/04 from J. Michael Graham, MD
- Stephen Esses, MD: Chart Note dated 06/21/04

- Universal MRI & Diagnostic Center: MRI thoracic spine dated 06/10/04
- River Oaks Imaging & Diagnostic: 06/04/04 CT lumbar spine, 10/13/03 CT lumbar spine, 04/24/03 lumbar scout films
- Texas Neurodiagnostic Associates: Electro diagnostic Referral Request dated 04/30/04
- William Langeland, DC: Prescription notes dated 04/20/04 (two), 09/29/03
- Kathy Stack: Memos dated 06/03/04, 04/20/04, 05/19/03 (two), 04/21/03, 04/16/03
- Texas Neurodiagnostic Associates: Nerve Conduction/EMG report dated 05/12/04
- Physical Medicine and Rehabilitation Center: Treatment Plan dated 04/11/04
- Retrospective Peer Review Report dated 01/17/04 from R. A. Buczek, DO
- Description of Services: Form letters dated 12/12/03 and 11/13/03
- Porter Chiropractic Center: Letter of Medical Necessity dated 12/10/03
- The El Paso Orthopedic Surgery Group: Clinic Note dated 11/25/03 from Johan Penninck, MD
- Evaluator: Comparative Muscle and Range of Motion reports dated 11/07/03
- Request for authorization of Reasonable and Necessary Services dated 11/07/03
- Daily SOAP Notes (handwritten) dated 11/07/03 through 09/08/04
- Bernie McCaskill, MD: Report dated 09/15/03
- Betty Leininger: Memo dated 08/15/03
- Pre-Op Assessment dated 06/20/03
- St. Luke's Hospital: Airway Management report dated 06/10/03
- St. Luke's Episcopal Health System: Report of Procedure dated 06/10/03 from Stephen Esses, MD
- Felisha Pollard: Memo dated 06/05/03
- Downtown Plaza Imaging Center: Anesthesia Evaluation dated 05/22/03
- Anesthesia Record dated 05/22/03
- Downtown Plaza Imaging: Recovery Record dated 05/22/03
- Downtown Plaza Imaging Center: CT scan, x-ray ultrasound report dated 05/22/02
- Downtown Plaza Imaging Center: Chest and lumbar spine radiographs dated 05/22/03, post discogram CT scan of the full lumbar spine dated 05/22/03, Intradiscal Marcaine and steroid injection at L4-5 and L5-S1 dated 05/22/03, L2 through S1 lumbar discogram
- Ogletree Law Firm: Letter dated 05/12/03 from Bill Abbott
- Corvel: Letter dated 05/07/03 from Ami Labrecque
- River Oaks Imaging and Diagnostic: Procedure and Anesthesia Record dated 04/24/03
- Summit Ambulatory Surgery Center: Operative Report dated 03/20/03 from K. Bobby Pervez, MD
- Corvel: Letters dated 05/19/03, 04/22/03, 04/17/03, 03/13/03, 02/11/03, 01/27/03
- ProCare: Memo dated 05/16/03
- BMC, Dept. of Orthopedic: Display Arrived Appointments reports for the period 04/03/03 through 11/03/03 and 01/05/04
- Benny J. Sanchez, MD & Associates: Request for Reconsideration dated 03/20/03
- Regional Specialty Clinic: Follow-up Notes dated 02/21/03 through 08/13/04 from K. Bobby Pervez, MD

- Baylor College of Medicine: Letters dated 02/10/03 through 03/16/04 from Stephen Esses, MD
- Regional Specialty Clinic: Initial Patient Consult dated 02/07/03 from K. Bobby Pervez, MD
- Debbie Turnipseed: Memos dated 02/07/03, 01/23/03
- Daily Patient Records (handwritten) dated 02/04/03 through 08/21/03
- Dr. Weiss: Handwritten doctor's notes for the period 02/04/03 through 12/02/03
- Conroe MRI-Diagnostics: Lumbar epidurogram and epidural steroid injection dated 01/30/03
- Rafael DeLaFlor-Weiss, MD: Reports dated 01/28/03, 01/14/03, 12/17/02, 12/03/02, 11/19/02, 11/08/02, 10/23/02, 10/11/02
- Pain Management Scheduling Checklist dated 01/15/02
- Handwritten doctor's note dated 12/31/02
- Handwritten doctor's note dated 12/03/02 through 01/28/03
- Recorded Claims Statement dated 11/20/02
- Radiology Report: MRI lumbar spine 11/13/02
- William Langeland, DC: Office note dated 11/08/02, 01/31/03
- DeLaFlor-Weiss, MD: Handwritten Progress Note dated 10/25/02
- Lonestar Orthopedics: Form letter dated 08/03/02
- EMS Supply Order dated 11/07/03
- Information sheet on Nopaine – Physician Strength Relieving Formula Medical Necessity
- Undated correspondence confirming a telephone conversation of 07/28/05
- Corvel: Undated preauthorization determinations for #s79522738-1, 79523001-1, 79517090-1, 79523920-1
- Summit Ambulatory Surgery Center: Undated Sedation Record
- Anesthesia Ground Rules document (undated)
- Transcutaneous Electrical Nerve Stimulator document (undated)
- Assignment of Proceeds, Contractual, Lien and Authorization (undated)
- Work/Comp History: Undated
- Insurance Verification for Worker's Compensation: Undated
- Conductive Garment Prescription: Undated

The reviewing provider is a **Licensed/Boarded Orthopedic Surgeon** and certifies that no known conflict of interest exists between the reviewing Orthopedic Surgeon and any of the treating providers or any providers who reviewed the case for determination prior to referral to the IRO. The reviewing physician is on TWCC's Approved Doctor List.

### **Your Right to Request A Hearing**

Either party to this medical dispute may disagree with all or part of the 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 10 (ten) days or your receipt of this decision (28Tex.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 **20** (twenty) days of your receipt of this decision (28Tex.Admin. Code 148.3©.)

This decision is deemed received by you 5 (five) days after it was mailed (28Tex.Admin. Code 102.4(h)(2) or 102.5(d)). A request for a hearing **and a copy of this decision** should be sent to:

Chief Clerk of Proceedings / Appeals Clerk  
Texas Workers' Compensation commission  
P.O. Box 17787  
Austin, Texas, 78744  
Fax: 512-804-4011

The party appealing the decision shall deliver a copy of its written request for a hearing to all other parties involved in the 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 carrier, the requestor and claimant via facsimile or U. S. Postal Service from the office of the IRO on this**

**4<sup>th</sup> day of October 2005.**

**Signature of IRO Employee:** \_\_\_\_\_

**Printed Name of IRO Employee:** \_\_\_\_\_