

# MEDICAL REVIEW OF TEXAS

[IRO #5259]

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## NOTICE OF INDEPENDENT REVIEW DETERMINATION

TDI-WC Case Number:	_____
MDR Tracking Number:	M2-06-0221-01
Name of Patient:	_____
Name of URA/Payer:	American Home Assurance Co.
Name of Provider: (ER, Hospital, or Other Facility)	
Name of Physician: (Treating or Requesting)	Richard A. Marks, MD

November 21, 2005

An independent review of the above-referenced case has been completed by a medical physician board certified in neurosurgery. The appropriateness of setting and medical necessity of proposed or rendered services is determined by the application of medical screening criteria published by Texas Medical Foundation, or by the application of medical screening criteria and protocols formally established by practicing physicians. All available clinical information, the medical necessity guidelines and the special circumstances of said case was considered in making the determination.

The independent review determination and reasons for the determination, including the clinical basis for the determination, is as follows:

See Attached Physician Determination

Medical Review of Texas (MRT) hereby certifies that the reviewing physician is on the Division of Workers' Compensation Approved Doctor List (ADL). Additionally, said physician has certified that no known conflicts of interest exist between him and any of the treating physicians or providers or any of the physicians or providers who reviewed the case for determination prior to referral to MRT.

November 21, 2005  
Notice of Independent Review Determination  
Page 2

Sincerely,

Michael S. Lifshen, MD  
Medical Director

cc: \_\_\_\_\_  
Richard A. Marks, MD  
Division of Workers' Compensation

CLINICAL HISTORY

CLINICAL INFORMATION REVIEWED:

Texas Interventional Pain Care, P.A., Dr. Khan from June 04 through August 04.

Orthopedic notes by Dr. Sekhavat from May of 04 to July 05.

Garland open MRI scan.

Independent Medical exam of 12/3/04 performed by Dr. Donald Mauldin.

Lumbar discogram performed at L3 only in February of 05

Lumbar discogram performed at L4 and L5 in June of 05

MRI of lumbar spine performed in April of 05

Independent medical rating performed in August of 05

Office notes from pain management physician Dr. John Fisk from August 05 to September 05

Orthopedic Spine notes from Dr. Richard Marks from March 05 to October 05

Notification of IRO assignment which included the medical dispute resolution request and the initial denial.

This is a gentleman who was injured in \_\_\_\_\_. He gives a history of lifting heavy objects at work which culminated in his developing low back pain. The medical chart begins following this. Following this, he was apparently evaluated by Dr Sekhavat and was referred to Texas Interventional Pain Medicine where he had a series of epidural injections without any improvement. He had more imaging studies including and open bore MRI scan which found him to have a disc

November 21, 2005  
Notice of Independent Review Determination  
Page 3

RE: \_\_\_\_\_

bulge at L3 of less than 2mm in size with no impingement. He had a statutory independent medical exam in December of 2004 performed by Dr. Donald Mauldin and later he had a discogram in February of 2005 at L3 alone which found him to have a posterior lateral tear but no concordant pain. Of note, there were no control levels performed on this. He then had a repeat MRI scan in April of 05 which found disc desiccation at L3, a degree of scoliosis but no loss of disc space, height or alignment and no evidence of neuro compromise. He had a lumbar discogram in June of 05 which found non concordant back pain at both L4 and L5. He had an impairment rating in August of 04 which found him to still be a surgical candidate and not having reached maximum medical improvement. He has also been seen by Dr. John Fisk from August 05 to September 05 with further conservative management. Finally, he has been evaluated and treated by an orthopedic surgeon; Dr. Richard Marks who is now currently recommending that this patient have a percutaneous L3 and L5 discectomy.

REQUESTED SERVICE(S)

Transcutaneous discal resection at L3 and at L5.

DECISION

Denied.

RATIONALE/BASIS FOR DECISION

As noted by the previous review, this patient has not had a comprehensive physical exam since March of 2005 which found him to have normal manual motor testing, normal sensation from L1 to S2 and equal deep tendon reflexes. Most importantly, he was noted on that physical exam to have cutaneous back pain. Dr. Marks dictates that he has "moderately severe tenderness diffusely about the lumbar spine, particularly L3 through S1 with moderate paravertebral tenderness bilaterally. He is also noted to have minimal issue of tuberosity tenderness on the right but none on the left. Also what is glaringly absent is any physical description of this patient. Is he overweight? Is he reasonably conditioned? There is no discussion of

November 21, 2005  
Notice of Independent Review Determination  
Page 4

RE: \_\_\_\_\_

his tobacco use. In short, none of the remediable factors have been mentioned with regards to his lumbar spine injury.

The imaging justification for this procedure simply does not exist. He has some disc desiccation at L3. Dr. Marks feels that it is greater than what the radiologist dictates, but even still, it is not substantial and he has virtually nothing at L5. His two discograms are technically inadequate. The initial study performed in January at L3 showed no concordant pain but a substantial posterior lateral tear. Only one level was performed and no control level was performed. Similar statements can be made about the second discogram this gentleman had. Again, no control levels were performed and he was again found to have non concordant back pain. In short, this patient's imaging studies confirm that this patient does not require any surgical procedure much less a two level discectomy. Further, one of Dr. Mark's office notes also discusses the fact that he does not think that attention should be directed at L3 and that he thought that he was having discogenic pain at L5 which of course is not borne out with the imaging studies which this patient has received. The justification for this denial is based on standard and reasonable medical practices. In addition the North American Spine Society's recommendation with regards to spine surgery as well as the American Association of Neurological Surgeons guidelines published in June of 2005 should be reviewed and are used as evidence of this denial.

November 21, 2005  
Notice of Independent Review Determination  
Page 5

RE: \_\_\_\_\_

Certification of Independence of Reviewer

As the reviewer of this independent review case, I do hereby certify that I have no known conflicts of interest between the provider and the injured employee, the injured employee's employer, the injured employee's insurance carrier, the utilization review agent, or any of the treating doctors or insurance carrier health care providers who reviewed the case for decision before referral to the IRO.

**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  
Division of Workers' Compensation  
P.O. Box 17787  
Austin, Texas 78744

Or fax the request to (512) 804-4011. A copy of this decision must be attached to the request.

November 21, 2005  
Notice of Independent Review Determination  
Page 6

RE: \_\_\_\_

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

In accordance with 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 \_\_\_\_ day of November 2005.

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

Printed Name of IRO Employee: Cindy Mitchell