

December 13, 2005

[Claimant]

Re:    **MDR #:**            M2-06-0355-01            **Injured Employee:**    \_\_\_  
      **DWC #:**            \_\_\_                                **DOI:**                    \_\_\_  
      **IRO Cert. #:**    5055                            **SS#:**                    \_\_\_

**TRANSMITTED VIA FAX TO:**  
**TDI, Division of Workers' Compensation**  
Attention: Medical Dispute Resolution  
Fax: (512) 804-4868

**REQUESTOR:**  
John Sazy, MD  
Attention: Kristi S.  
Fax: (817) 468-7676

**RESPONDENT:**  
State Office of Risk Management  
Attention: Jennifer Dawson  
Fax: (512) 370-9170

**TREATING DOCTOR:**  
Anthony Esquibel, DC  
Fax: (867) 628-1001

Dear Ms. \_\_\_:

In accordance with the requirement for DWC to randomly assign cases to IROs, DWC 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 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 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 a board certified in Orthopedic Surgery and Spinal Surgeons and is currently listed on the DWC Approved Doctor List.

We are simultaneously forwarding copies of this report to the payor and the TDI, Division of Workers' Compensation. This decision by Independent Review, Inc. is deemed to be a DWC decision and order.

#### 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.

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 December 13, 2005.

Sincerely,

Gilbert Prud'homme  
General Counsel

GP/dd

#### **REVIEWER'S REPORT M2-05-0355-01**

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**Information Provided for Review:**

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

From Requestor:

Office Visit 07/21/05

Nerve Conduction 08/17/04

Radiology Report 07/25/04 – 04/15/05

From Respondent:

Correspondence

Designated Review

Treating DC:

Office Notes 01/13/05 – 11/23/05

PT Notes 09/24/04 – 10/17/05

Pain Management:

Office Notes 10/14/04 – 07/19/05

OR 11/16/04 – 12/21/04

Spine:

Office Notes 10/26/04 – 04/22/05

**Clinical History:**

This patient, a 52-year-old female at the time, who is 5 feet 2 inches in height and approximately 244 pounds. She was injured in a work-related accident. She was determined to have a normal MRI scan with some degenerative disc disease, i.e. discs, on MRI scan at L4/L5 and L5/S1, instability at L4/L5, and discogenic pain reproduction on provocative discography.

**Disputed Services:**

Lumbar transforaminal lateral interbody fusion, L5/S1 with 5 days of hospital and cardiac care.

**Decision:**

The reviewer agrees with the determination of the insurance carrier and is of the opinion the services in dispute as stated above are not medically necessary in this case.

**Rationale:**

The patient's symptoms complex varies from examiner to examiner, many documenting radicular-type symptoms including positive straight leg raising, others documenting axial pain. She had health and behavioral assessment showing a disability index of 66% but importantly, somatization of 65%, depression 66%, anxiety 60%, as well as severity index of 65%. The file was replete with observations of depression and inconsistent examination.

**Screening Criteria, Treatment, Guidelines and Publications Utilized:**

The proposed surgeon refers to North American Spine Society's Clinical Guidelines. I have referred to the North American Spine Society's Phase 3 Clinical Guidelines for chronic unrelenting low back pain and the use of provocative discography. A discogram under certain circumstances may be utilized to evaluate abnormal-appearing discs on MRI scan if: (1) the patient has had unrelenting low back pain resistant to conservative care for more than 6 months, which this patient has; (2) if the issues of psychological dysfunction are not prominent, which they are in this patient; (3) all degenerative discs and only 1 normal disc are identified by MRI scan, which was performed on this patient; and (4) the results of the carefully performed imaging and provocative test are combined, which in this case the MRI scan and the plain bone films are only partially born out by the results of the provocative discography. The flexion/extension views documented instability at L4/L5. The disc space heights were well preserved. There was some loss of T2 signal on the MRI scan, and the L5/S1 disc showed a 5/10 provocative pain reproduction. This is not sufficiently causative in my mind to warrant a major spinal fusion. Furthermore, the complaints of radiating leg pain are not supported by the discographic pathology, and in fact, this was not reproduced by provocative discography. When one refers to page 50 of the North American Spine Society's Clinical Guidelines, Phase 3, for unrelenting low back pain, it is noted that this patient would have poor results overall despite concordant provocative discography. Furthermore, typically discography is not used to evaluate normal-appearing disc. The typical use is when the MRI scan demonstrates a significant abnormality. In this case, normal age and degenerative change was the only abnormality seen on the provocative discography. Hence, the likelihood for successful outcome, given the patient's physical examination, incompatible neurological complaints, depression, somatization, and the lack of complete concordance between the imaging studies and the discogram, I would not tend to predict a satisfactory outcome in this patient.