

# MCMC

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

<b>Date:</b>	<b>03/30/2006</b>
<b>Injured Employee:</b>	
<b>Address:</b>	
<b>MDR #:</b>	<b>M2-06-0870-01</b>
<b>DWC #:</b>	
<b>MCMC Certification #:</b>	<b>IRO 5294</b>

### REQUESTED SERVICES:

Please review the item(s) in dispute: Pre-authorization denied for lumbar discogram/CT.

### DECISION: Upheld

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IRO MCMCllc (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 03/30/3006, concerning the medical necessity of the above referenced requested service, hereby finds the following:

The lumbar discogram/CT scan is not medically necessary.

### CLINICAL HISTORY:

This 31-year-old male was allegedly injured on \_\_\_ when he was unloading a UPS truck. A shelf allegedly fell against his lower back producing pain immediately. He was treated with Ibuprofen and Elavil.

William Crowe, RN FNP, evaluated him on behalf of Dr. Bidner (orthopedic) on 06/07/2005 for complains of 10/10 level of low back pain. On examination there was no evidence of any objective clinical findings of any organic disease. The injured individual was treated for a lumbar strain with Celebrex, physical therapy (PT) and work restrictions that included a 10-pound weight limit.

### REFERENCE:

Carragee, E.J., et al. False positive findings on lumbar discography: reliability of subjective concordance assessment during provocative disc injections: Spine (1999) 24: 2542-2547.

Fitzell P. 2001 Volvo Award Winner in Clinical Studies: Lumbar fusion versus nonsurgical treatment for chronic low back pain: a multicenter randomized controlled trail from the Swedish Lumbar Spine Study Group. Spine. 2001 Dec 1:26[23]:2521-32: discussion 2532-4.

Boden, S.D. et al. Disc Replacements: This Time Will We Really Cure Low-Back and Neck Pain? The Journal of Bone and Joint Surgery (American) 86:411-422 (2004).

**RATIONALE:**

The MRI study of 07/19/2005 revealed a 3-4 millimeters focal disc protrusion at L4/5 level that indents the thecal sac to a mild degree. Dr. Winans (Orthopedics) evaluated the injured individual to determine maximum medical improvement (MMI) and permanent partial impairment (PPI) status. He concluded that the injured individual had no objective clinical findings commensurate with his complaints or the imaging findings. He also noted the presence of findings suggestive of pain behaviors and symptom magnification. Despite these findings Dr. Winans determined that the injured individual was not at MMI status and warranted six weeks of a spinal rehabilitation program.

The injured individual underwent a Functional Abilities Examination on 08/02/2005 that concluded the injured individual was unable to lift/carry/push/pull/crouch/stoop/kneel/stand or sit for prolonged periods without pain. He was said to “demonstrate objective clinical signs and symptoms of a dysfunctional lumbar region”. He allegedly demonstrated deficits and weaknesses that were below the norm. These findings and conclusions were completely at variance with the findings of the orthopedic surgeons.

The EMG/NCV studies of 08/03/2005 apparently revealed a right L5 radiculopathy. The injured individual was then evaluated at the request of Dr. Esquibel (chiropractor) by Dr. Perl, an osteopath, on 08/10/2005 for the same complaints. Despite the absence of objective clinical findings commensurate with his complaints, on the basis of a positive right straight leg raise (SLR) test with buttock pain Dr. Perl recommended Lidoderm patches and a series of epidural steroid injections (ESI's).

The chiropractor then had the injured individual evaluated by Dr. Shah (pain) on 08/16/2005. Once again his physical findings were not commensurate with the degree of severity of his complaints. Despite this he was said to have irritation of the L4 and L5 nerve roots and ESI's were recommended. He was also to continue to be treated by the chiropractor.

The chiropractor then referred him to Dr. Henderson on 10/14/2005 for possible “surgical evaluation”. At the request of the same chiropractor on 10/05/2005 the injured individual had also had a behavioral medicine consultation to determine if he was a suitable candidate for surgical treatment.

Per Dr. Henderson's office notes the injured individual had “markedly diminished libido secondary to pain”. He was complaining of constant low back pain and intermittent numbness and tingling in the right big toe. He was 5'9" tall and weighed 215 pounds. He had limited range of motion (ROM) of the lumbar spine and a negative SLR test. There is no documentation of

objective clinical findings commensurate with his complaints or the imaging findings. Despite the paucity of clinical and imaging findings Dr. Henderson recommended a discogram study.

Dr. Winans (Orthopedics) re-evaluated him on 10/17/2005 and concluded that the injured individual exhibited pain behaviors and had positive Waddell signs. He was deemed to be at MMI status. Based on the complaints and the MRI findings he was given a 5% PPI rating. There were additional reviews done on 12/09/2005 by Dr. Milnor and by Dr. Winans on 12/29/2005.

The submitted records raise many questions as to why an individual with minimal, if any, objective clinical findings was referred within a period of a few weeks by a chiropractor to several different specialists while still continuing treatment with the chiropractor. It seems there was no time given to allow any treatment to work.

There did not seem to be any recommendation to lose weight, exercise, get involved with a daily home exercise program (HEP) of conditioning and back stabilization. In addition the injured individual should never have been taken off work. This latter factor together with the frequent evaluations by a number of different specialists and the numerous tests, have most likely created a concept of a major illness.

The injured individual has no evidence of objective clinical findings of an organic disease of sufficient magnitude to warrant any of the tests, evaluations and the treatments to date. He is definitely not a candidate for any invasive treatment until he loses at least 50 pounds and demonstrates objective clinical findings of an organic disease of sufficient magnitude to warrant treatment. Therefore, the requested discogram is inappropriate and not warranted.

**RECORDS REVIEWED:**

Notification of IRO Assignment dated 03/06/06

MR-117 dated 03/06/06

MR-100 dated 02/23/06

DWC-60

DWC-69: Reports of Medical Evaluation with exam dates of 10/17/05, 07/25/05

DWC-73: Work Status Report dated 06/07/05

MCMC: IRO Acknowledgment and Invoice Notification Letter dated 03/06/06

Utilization: Letters dated 02/27/06 (two) from Carolyn Guard, Quality Assurance Consultant

Utilization: Letter dated 02/08/06 from Rebecca Shultz, RN

Texas Health: Letter of Medical Necessity dated 01/18/06 from Anthony Esquibel, D.C.

Professional Reviews, Inc.: Physician Pharmacy Review dated 01/12/06 from Lucy Cohen, M.D.

Intracorp: Report dated 12/29/05 from Robert Winans, M.D.

Liberty Mutual: Letters dated 12/29/05, 12/26/05 (two), 12/23/05 (two), 12/09/05, 12/06/05, 08/24/05, 08/22/05

Carf: Preauthorization Request dated 12/14/05

R. E. Branch, M.D.: Letter dated 12/13/05 with attached Internet References 1 and 2

The Law Offices of Eric H. Marye & Associates: Letter dated 12/13/05

Dallas Injury Management Associates: Letters dated 12/13/05, 10/12/05  
Tri-City Chiropractic and Rehabilitation: Letters of Medical Necessity dated 12/12/05, 10/04/05 from Anthony Esquibel, D.C.  
Intracorp: Report dated 12/09/05 from William Milnor, M.D.  
Dallas Injury Management Associates: Medication referral forms dated 12/05/05, 11/07/05, 10/24/05, 10/10/05, 09/26/05, 09/06/05  
Dallas Injury Management Associates: Referral forms dated 12/05/05, 11/07/05 from Anthony Esquibel, D.C.  
DFW Open MRI: Preauthorization Request dated 12/01/05  
Professional Reviews, Inc.: Physician Pharmacy Review dated 11/23/05 from Elena Antonelli, M.D.  
Texas Workers' Compensation Commission: Letter dated 11/14/05  
Professional Reviews, Inc.: Billing Retrospective Review dated 11/14/05 from Thomas Sato, D.C.  
Bloomer, Jeffery S.: Journal Entry dated 11/02/05  
Texas Department of Insurance: Report signed 10/31/05 by Warren Hancock, Jr., Hearing Officer  
DFW MRI: Request form dated 10/24/05  
Robert G. Winans, M.D.: Reports dated 10/17/05, 07/25/05  
Dallas Spine Care: Cover letter dated 10/17/05  
Dallas Spine Care: Initial Chart Note dated 10/14/05 from Robert Henderson, M.D.  
Texas Health: Patient Face Sheet dated 10/13/05  
Carf: Behavioral Medicine Consultation dated 10/05/05 from Erica Penick, MA and Tracey Duran, MS  
Carf: Continuation Request for Individual Psychotherapy and an Initial Request for Biofeedback dated 10/05/05 from Erica Penick, MA and Tracey Duran, MS  
Chaput, Molly: Journal Entry dated 10/03/05  
Focus: Progress Assessment dated 09/20/05  
Texas Health: Referral form dated 09/16/05  
Green Diagnostic Inc.: Functional Abilities Evaluations dated 08/30/05, 08/02/05  
Metro Pain Management: Procedure Note dated 08/23/05 from Mike Shah, M.D.  
Mike Shah, M.D.: Pain Management Consultation dated 08/16/05 from Mike Shah, M.D.  
Texas Non-Surgical Orthopedic & Spine Center: Report dated 08/10/05 from Karen Perl, D.O.  
Diagnostic Testing Services, Inc.: Electrodiagnostic test results dated 08/03/05 from Kirtland Speaks, D.C.  
CVS Pharmacy: Prescription labels with information sheets dated 07/28/05 (Tramadol), 08/10/05 (Lidoderm), 09/06/05 (Hydrocodone), 09/07/05 (Ambien, Cyclobenzaprine), 10/13/05 (Diazepam)  
DFW MRI: MRI lumbar spine dated 07/19/05  
Tri-city Chiro & Rehab Inc: Daily Notes Reports dated 07/14/05 through 03/02/05 from Anthony Esquibel, D.C.  
Discharge Summary (handwritten) dated 07/08/05

North Texas Orthopedics: Office notes dated 06/21/05, 06/07/05 from Dr. Sandy Bidner  
CVS Pharmacy: Prescription labels dated 05/28/05 (Amitriptyline, Flurbiprofen), 01/25/06 (Ambien)  
Evaluation Summary & Plan of Care (handwritten) dated 06/09/05  
PCA Rehabilitation & Physical Therapy: Form dated 06/07/05  
Anthony Esquibel, D.C.: Undated Referral Letter  
Physician Activity Status Report, undated, from James Lowell, M.D.  
Dallas Injury Management Associates: Undated letter from Dr. B addressed to Cindy and/or Jennifer  
Tri-City Chiropractic and Rehabilitation: Workers' Compensation Patient Information (handwritten, undated)

The reviewing provider is a Licensed/Boarded Orthopedic Surgery and certifies that no known conflict of interest exists between the reviewing Orthopedic Surgery 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 prior to referral to the IRO. The reviewing physician is on DWC's Approved Doctor List.

### **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.

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 Department of Insurance Division of Workers' Compensation  
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**

**30<sup>th</sup> day of March 2006.**

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

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