

April 12, 2006

TX DEPT OF INS DIV OF WC  
AUSTIN, TX 78744-1609

CLAIMANT: \_\_\_

EMPLOYEE: \_\_\_

POLICY: M2-06-0951-01

CLIENT TRACKING NUMBER: M2-06-0951-01-5278

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Medical Review Institute of America (MRIOA) has been certified by the Texas Department of Insurance as an Independent Review Organization (IRO). The Texas Department of Insurance Division of Workers Compensation has assigned the above-mentioned case to MRIOA for independent review in accordance with DWC Rule 133 which provides for medical dispute resolution by an IRO.

MRIOA has performed an independent review of the proposed care to determine if the adverse determination was appropriate. In performing this review all relevant medical records and documentation utilized to make the adverse determination, along with any documentation and written information submitted, was reviewed. Itemization of this information will follow.

The independent review was performed by a peer of the treating provider for this patient. The reviewer in this case is on the DWC approved doctor list (ADL). The reviewing provider has no known conflicts of interest existing between that 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.

**Records Received:**

Records Received from the State:

- Notification of IRO Assignment, 3/22/06 - 2 pages
- Medical Dispute Resolution Request/Response, 3/22/06 - 2 pages
- Table of Disputed Charges, undated - 1 page
- Forte Notice of Utilization Review Findings, 1/17/06 - 2 pages
- Forte Notice of Utilization Review Findings, 2/16/06 - 2 pages

Records Received from the Insurance Company (Respondent):

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- Letter from Downs Stanford PC to MRIOA, 3/30/06 - 2 pages
- Forte Letter of Agreement, 1/12/06 - 1 page
- Forte Notice of Intent to issue and Adverse Determination, 1/16/06 - 1 page
- Forte Notice of Intent to issue and Adverse Determination, 2/15/06 - 1 page
- DNI Cervical and Lumbar Myelogram and CT, 11/23/05 - 3 pages
- HighPoint Health and Behavioral Initial Assessment, 2/2/04 - 3 pages
- HighPoint Chronic Pain Evaluation, 2/4/04 - 3 pages
- HighPoint Chronic Pain Evaluation, 3/5/04 - 3 pages
- HighPoint Individual Psychotherapy Note, 8/3/04-8/26/04 - 4 pages
- HighPoint Chronic Pain Evaluation, 4/20/05 - 2 pages
- Doctor's Review Letter, 5/4/04 - 1 page
- Doctor's Review Letter, 5/21/04 - 2 pages
- Review from Dr. Kern, 6/1/04 - 8 pages
- Texas Workers' Compensation Work Status Report, 6/1/04 - 1 page
- Doctor's Review Letter, 6/25/04 - 2 pages
- Peer Review from Dr. Blair, 6/29/04 - 15 pages
- Doctor's Review Letter, 7/2/04 - 1 page
- MedConfirm Form, 3/1/05 - 3 pages
- Review from Dr. Mendez, 11/7/04 - 8 pages
- Review from Dr. Hood, 4/18/05 - 6 pages
- Review from Dr. Kern, 12/1/05 - 8 pages

Records Received from Requestor:

- Letter from Downs Stanford PC to Texas Workers' Compensation Commission, 3/23/06 - 1 page
- Letter from Jacob Rosenstein MD to Whom it May Concern, 2/20/06 - 1 page
- Office notes from Jacob Rosenstein, MD, 2/28/01 - 3 pages
- DNI Cervical and Lumbar Myelogram and CT, 3/29/01 - 3 pages
- HighPoint Cervical Epidural Steroid Injection with Epiduragram, 9/24/01 - 2 pages
- HighPoint Cervical Epidural Steroid Injection with Epiduragram, 10/18/01 - 2 pages
- DNI Lumbar Discogram and CT, 1/15/02 - 2 pages
- DNI Lower Extremity Electrodiagnostic Study, 1/25/02 - 5 pages
- DNI Cervical Spine X-Rays: AP and Lateral, 8/23/02 - 1 page
- DNI Cervical Spine X-Rays: Lateral Flexion-Neutral-Extension, 10/10/02 - 1 page
- DNI Lumbar Discogram, 11/26/02 - 2 pages
- DNI Cervical Spine X-Rays: Lateral Flexion-Neutral-Extension, 11/26/02 - 1 page
- DNI Cervical Spine X-Rays: Lateral Flexion-Neutral-Extension, 12/18/02 - 1 page
- DNI EMG, 1/20/03 - 5 pages
- DNI Lumbar Myelogram and CT, 1/22/03 - 2 pages
- DNI Lumbar Spine X-Rays: Ap, Lateral, Oblique, 4/3/03 - 1 page
- DNI CT of the Lumbosacral Spine, 4/25/03 - 1 page
- DNI Lumbar Spine X-Rays: AP, Oblique, Fergusonx2, Flexion-Neutral-Extension, Lateral, 6/6/03 - 1 page

- DNI Consultation – EMG/NCV, 10/20/03 – 3 pages
- DNI Lumbar Myelogram and CT, 10/27/03 – 2 pages
- DNI Lumbar Spine X-Rays: AP, Oblique, Flexion–Neutral–Extension, Lateral, 12/6/03 – 1 page
- Follow up from Jacob Rosenstein, MD, 1/5/04 – 2 pages
- HighPoint Chronic Pain Evaluation, 2/4/04 – 3 pages
- Follow up from Jacob Rosenstein, MD, 2/12/04 – 2 pages
- Follow up from Jacob Rosenstein, MD, 3/2/04 – 2 pages
- Procedure Note for Lumbar Trigger Point Injection X4, 3/2/04 – 1 page
- HighPoint Chronic Pain Evaluation, 3/5/04 – 3 pages
- Follow up from Jacob Rosenstein, MD, 4/13/04 – 2 pages
- Chart Notes from Jacob Rosenstein, MD, 4/14/04–4/26/04 – 2 pages
- Follow up from Jacob Rosenstein, MD, 4/27/04 – 2 pages
- DNI Cervical Spine X-Rays: Lateral Flexion–Neutral–Extension, 5/7/04 – 1 page
- Medical Conference Note from Jacob Rosenstein, MD, 5/25/04 – 1 page
- History, Physical, and Neurological Examination and Admission to USMD Surgical Hospital at Arlington, 6/7/05 – 3 pages
- Follow up from Jacob Rosenstein, MD, 6/16/04 – 2 pages
- DNI Cervical Spine X-Rays: Lateral Flexion–Neutral–Extension, 6/16/04 – 1 page
- HighPoint Preauthorization Letter, 7/19/04 – 1 page
- Follow up from Jacob Rosenstein, MD, 7/26/04 – 2 pages
- HighPoint Appeal for Health/Behavioral Intervention, 7/27/04 – 1 page
- HighPoint Individual Psychotherapy Note, 8/3/04–8/9/04 – 2 pages
- Follow up from Jacob Rosenstein, MD, 8/11/04 – 2 pages
- HighPoint Individual Psychotherapy Note, 8/16/04–8/26/04 – 3 pages
- Chart Notes from Jacob Rosenstein, MD, 9/16/04 – 1 page
- Follow up from Jacob Rosenstein, MD, 9/29/04 – 2 pages
- History, Physical, and Neurological Examination and Admission to USMD Surgical Hospital at Arlington, 12/14/04 – 3 pages
- DNI Cervical Spine X-Rays: AP, Oblique, Flexion–Neutral–Extension, Lateral, 3/22/05 – 2 pages
- HighPoint Chronic Pain Evaluation, 4/20/04 – 2 pages
- Follow up from Jacob Rosenstein, MD, 8/4/05 – 2 pages
- Follow up from Jacob Rosenstein, MD, 8/18/05 – 2 pages
- Follow up from Jacob Rosenstein, MD, 10/10/05 – 2 pages
- HighPoint Caudal Epidural Steroid Injection with Epidurography, 11/2/05 – 1 page
- DNI Cervical and Lumbar Myelogram and CT, 11/23/05 – 3 pages
- HighPoint Interim Note: Premedication for Contrast, 11/28/05 – 1 page
- HighPoint Caudal Epidural Steroid Injection with Epidurography, 11/30/05 – 1 page
- RME Review Report from Jacob Rosenstein, MD, 12/15/05 – 1 page
- Follow up from Jacob Rosenstein, MD, 12/21/05 – 2 pages
- HighPoint Psychological Services Request, 12/21/05 – 1 page
- Medical Conference Note from Jacob Rosenstein, MD, 1/5/06 – 1 page
- HighPoint Pre-Auth Request for Psychological Evaluation, 1/9/06 – 21 pages

- HighPoint Pre-Auth Request for Psychological Evaluation, 2/5/06 – 3 pages
- Follow up from Jacob Rosenstein, MD, 1/13/06 – 2 pages
- Forte Notice of Intent to Issue an Adverse Determination, 3/30/06 – 1 page

**Summary of Treatment/Case History:**

The patient is a 50 year-old male who was originally injured on \_\_\_\_\_. On this date, the patient reported sustaining injuries to his cervical and lumbar spine as the result of a workplace event. The patient reported he was assisting a client into bed when her legs gave out. The patient and the client fell with his low back striking the bed and his neck hit the bed rail. The patient was initially evaluated at the emergency room of Baylor Medical Center two days later. X-ray's were performed and the patient was prescribed oral medications. The pain was reported to become progressively worse and patient then came under the care of Dr. Patel. Imaging studies were requested and the patient was referred to Dr. Jacob Rosenstein on 02/28/2001. The patient has remained under the care of Dr. Rosenstein since that initial evaluation.

The patient had multiple diagnostic studies and extensive conservative care with no subjective improvement. The patient was eventually taken to surgery on 07/26/2002. At this time, Dr. Rosenstein performed an ACDF from C4 to C7. The patient had continued difficulties and was again taken to surgery for a decompression and fusion from L4 to S1 on 03/06/2003. The patient did not appreciate any significant improvement as a result of these surgical interventions. The record includes several peer reviews performed by Dr. Dr. Jack Kearn, Dr. William Blair, and Dr. James Hood.

Dr. Blair reports on 06/29/2004 that he had previously recommended against surgical intervention on 12/07/2001. He indicates that at the time of initial evaluation the patient had a diagnosis of cervical and lumbar radiculopathy. However, Dr. Blair finds no objective evidence of radiculopathy on physical examination. He notes no objective evidence of neurologic compromise. He reports the patient has significant depression and had demonstrated significant dysfunctional pain behavior. He opines the patient has failed treatment that would have relieved organic symptom complexes. The other reviewers had similar opinions and recommend against further surgical intervention. The patient has had extensive conservative care for his continued subjective reports. This has included physical therapy, aquatic therapy, and multiple corticosteroid injections. The record further suggests the patient has previously participated in a work conditioning and later a work hardening program.

The record includes a significant amount of serial diagnostic imaging and electrodiagnostic studies. The initial electrodiagnostic study of the lower extremities was performed on 01/25/2002. This study performed prior to the patient's fusion procedure is reported as normal. A postoperative study performed on 01/20/2003 of the cervical spine was normal. A third study performed on 10/20/2003 was abnormal. This post-operative study indicated acute denervation of the L4 to S1 nerve roots. The patient is currently diagnosed with neurogenic claudication of the lower extremities, L3/4 stenosis, status post L4/5 and L5/S1 PLIF (03/06/2003), status post C5/6 ad C6/7 ACDF (07/26/2002), and a disc protrusion with spondylosis and stenosis at C3/4 and C4/5. The patient has been recommended for additional surgical intervention by Dr. Rosenstein. This request has been denied twice by two

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separate physician advisors. This request has completed the review process and surgical intervention was not recommended on appeal.

The record indicates that the patient has previously had a health and behavioral assessment performed on 02/02/2004. This was followed by a chronic pain evaluation performed on 02/04/2004. The patient was noted to have severe depression and severe anxiety. The patient later has referred to Dr. Slaughter for individual psychotherapy. The patient has four visits between 08/03/2004 and 08/26/2004. A second Chronic Pain Evaluation was performed on 04/20/2005. At this time the patient is noticeably depressed. Dr. Slaughter indicates the patient has a poor understanding of the proposed implantation of a spinal cord stimulator. He further reports the patient is having borderline psychotic symptoms and recommends the patient be placed on a low dose anti-psychotic and develops a more thorough understanding of the procedure.

**Questions for Review:**

ITEM(S) IN DISPUTE: Preauthorization denied for repeat #90801 – Psychological Diagnostic Interview.

**Explanation of Findings:**

ITEM(S) IN DISPUTE: Preauthorization denied for repeat #90801 – Psychological Diagnostic Interview.

No. The basic medical indication for the performance of a psychiatric evaluation in Worker's Compensation is to determine if there are comorbid psychiatric or behavioral issues that would make the patient an operative risk or predispose the patient to a poor surgical outcome. The previous reviews clearly indicate operative intervention is not recommended through the appeal process. In view of this there is no medical necessity for the requested evaluation.

Dr. Slaughter's serial evaluations indicate this patient has many comorbid behavioral and psychiatric issues which would preclude successful operative intervention. The patient would most likely benefit from referral to a local MHMR facility. The Official Disability Guidelines (ODG) recommends "Support provider referral prior to operative intervention – Manual therapy (massage therapist or chiropractor), Physical therapy (teach home exercise/stretching), or Psychological screening that could affect surgical outcome. ODG further recommends prior to discography the patient must have "satisfactory results from detailed psychosocial assessment (discography in subjects with emotional and chronic pain problems has been linked to reports of significant back pain for prolonged periods after injection, and therefore should be avoided)".

The pre-operative clinical surgical indications for spinal fusion include all of the following:

1. All pain generators are identified and treated; and
2. All physical medicine and manual therapy interventions are completed; and
3. X-ray, MRI, or CT/Discography demonstrating disc pathology or spinal instability; and
4. Spine pathology limited to two levels; and
5. Psychosocial screen with confounding issues addressed.
6. For any potential fusion surgery, it is recommended that the injured worker refrain from smoking for at least six weeks prior to surgery and during the period of fusion healing.

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Psychological screening is recommended as an option prior to surgery, or in cases with expectations of delayed recovery. Before referral for surgery, clinicians should consider referral for psychological screening to improve surgical outcomes, possibly including standard tests such as MMPI (Minnesota Multiphasic Personality Inventory) and Waddell signs. A recent study concluded that psychological distress is a more reliable predictor of back pain than most diagnostic tests.

**Conclusion/Decision to Not Certify:**

The request for the Psychological Diagnostic Interview is not medically necessary.

**References Used in Support of Decision:**

1. Fisher C, Noonan V, Bishop P, Boyd M, Fairholm D, Wing P, Dvorak M. Outcome evaluation of the operative management of lumbar disc herniation causing sciatica. *J Neurosurg Spine*. 2004 Apr; 100(4): 317–24.
2. Colorado Division of Workers' Compensation, Medical Treatment Guidelines, Rule XVII, Low Back Pain, 12/1/01.
3. BlueCross BlueShield. Surgery Section – Lumbar Spine Surgery. Policy No: 101. Effective Date: 09/03/2002.
4. Scalzitti DA, Screening for psychological factors in patients with low back problems: Waddell's nonorganic signs, *Phys Ther* 1997 Mar; 77(3): 306–12.
5. Fritz JM, Wainner RS, Hicks GE, The use of nonorganic signs and symptoms as a screening tool for return-to-work in patients with acute low back pain, *Spine* 2000 Aug 1; 25(15): 1925–31.
6. Gaines WG Jr, Hegmann KT, Effectiveness of Waddell's nonorganic signs in predicting a delayed return to regular work in patients experiencing acute occupational low back pain, *Spine* 1999 Feb 15; 24(4): 396–400; discussion 401.
7. Gatchel RJ, Polatin PB, Kinney RK, Predicting outcome of chronic back pain using clinical predictors of psychopathology: a prospective analysis, *Health Psychol* 1995 Sep; 14(5): 415–20.
8. McIntosh G, Frank J, Hogg-Johnson S, Bombardier C, Hall H, Prognostic factors for time receiving workers' compensation benefits in a cohort of patients with low back pain, *Spine* 2000 Jan 15; 25(2): 147–57.
9. Polatin PB, Cox B, Gatchel RJ, Mayer TG, A prospective study of Waddell signs in patients with chronic low back pain. When they may not be predictive, *Spine* 1997 Jul 15; 22(14): 1618–21.
10. Riley JL 3rd, Robinson ME, Geisser ME, Wittmer VT, Smith AG, Relationship between MMPI-2 cluster profiles and surgical outcome in low-back pain patients, *J Spinal Disord* 1995 Jun;8(3): 213–9.
11. Block AR, Ohnmeiss DD, Guyer RD, Rashbaum RF, Hochschuler SH. The use of presurgical psychological screening to predict the outcome of spine surgery. *Spine J*. 2001 Jul-Aug; 1(4): 274–82.
12. Carragee EJ, Barcohana B, Alamin T, van den Haak E, Prospective controlled study of the development of lower back pain in previously asymptomatic subjects undergoing experimental discography, *Spine*. 2004 May 15; 29(10): 1112–7.

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13. The American College of Occupational and Environmental Medicine Guidelines. Accessed: 04/11/2006.
14. The Official Disability Guidelines, 11th edition, The Work Loss Data Institute. Accessed: 04/11/2006.

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The physician who provided this review is board certified by the American Board of Neurological Surgery. This reviewer is a member of the American Association of Neurological Surgeons and the Congress of Neurological Surgeons. This reviewer has been in active practice since 2002.

#### 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, TX 78744

A copy of this decision should be attached to the request. The party appealing the decision shall deliver a copy of its written request for a hearing to all other parties involved in the dispute. MRIOA is forwarding this decision by mail, and in the case of time sensitive matters by facsimile, a copy of this finding to the DWC.

It is the policy of Medical Review Institute of America to keep the names of its reviewing physicians confidential. Accordingly, the identity of the reviewing physician will only be released as required by state or federal regulations. If release of the review to a third party, including an insured and/or provider, is necessary, all applicable state and federal regulations must be followed.

Medical Review Institute of America retains qualified independent physician reviewers and clinical advisors who perform peer case reviews as requested by MRIOA clients. These physician reviewers and clinical advisors are independent contractors who are credentialed in accordance with their particular specialties, the standards of the American Accreditation Health Care Commission (URAC), and/or other state and federal regulatory requirements.

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The written opinions provided by MRIOA represent the opinions of the physician reviewers and clinical advisors who reviewed the case. These case review opinions are provided in good faith, based on the medical records and information submitted to MRIOA for review, the published scientific medical literature, and other relevant information such as that available through federal agencies, institutes and professional associations. Medical Review Institute of America assumes no liability for the opinions of its contracted physicians and/or clinician advisors. The health plan, organization or other party authorizing this case review agrees to hold MRIOA harmless for any and all claims which may arise as a result of this case review. The health plan, organization or other third party requesting or authorizing this review is responsible for policy interpretation and for the final determination made regarding coverage and/or eligibility for this case.

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Case Analyst: Jamie C ext 583

CC: requestor and respondent