



# PROFESSIONAL ASSOCIATES

## NOTICE OF INDEPENDENT REVIEW

**NAME OF PATIENT:** \_\_\_\_\_  
**IRO CASE NUMBER:** M2-06-1009-01  
**NAME OF REQUESTOR:** Kenneth Berliner, M.D.  
**NAME OF PROVIDER:** Kenneth Berliner, M.D.  
**REVIEWED BY:** Board Certified in Orthopedic Surgery  
**IRO CERTIFICATION NO:** IRO 5288  
**DATE OF REPORT:** 04/27/06

Dear Dr. Berliner:

Professional Associates has been certified by the Texas Department of Insurance (TDI) as an independent review organization (IRO) (#IRO5288). Texas Insurance Code Article 21.58C, effective September 1, 1997, allows a patient, in the event of a life-threatening condition or after having completed the utilization review agent's internal process, to appeal an adverse determination by requesting an independent review by an IRO.

In accordance with the requirement for TDI-Division of Workers' Compensation (DWC) to randomly assign cases to IROs, DWC has assigned your case to Professional Associates for an independent review. The reviewing physician selected has performed an independent review of the proposed care to determine if the adverse determination was appropriate. In performing this review, the reviewing physician reviewed relevant medical records, any documents utilized by the parties referenced above in making the adverse determination, and any documentation and written information submitted in support of the appeal.

This case was reviewed by a physician reviewer who is Board Certified in the area of Orthopedic Surgery and is currently listed on the DWC Approved Doctor List.

I am the Secretary and General Counsel of Professional Associates 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 the provider, the injured employee, the injured

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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.

### **REVIEWER REPORT**

#### **Information Provided for Review:**

An evaluation with Edward C. Murphy, M.D. dated 02/10/04  
CT scans of the cervical spine and head/brain interpreted by Scott G. Bryk, M.D. dated 02/10/04  
A somatosensory evoked response study interpreted by Gerald Ratinov, M.D. dated 02/10/04  
A request for individual therapy from Tiffany R. Baugher, M.A., L.P.C. dated 02/10/04  
An MRI of the cervical spine interpreted by I. Ray Kirk, M.D. dated 02/11/04  
Laboratory studies dated 02/11/04  
A discharge summary from Dr. Murphy dated 02/18/04  
Evaluations with Hector J. Ortiz, M.D. dated 03/10/04, 04/05/04, 04/22/04, 05/04/04, 05/18/04, 06/17/04, 07/07/04, 08/19/04, 08/31/04, and 09/20/04  
EMG/NCV studies interpreted by Pedro Guana, M.D. dated 04/06/04 and 06/22/04  
A Required Medical Evaluation (RME) with Leonard Hershkowitz, M.D. dated 05/19/04  
An MRI of the lumbar spine interpreted by Chris Wright, M.D. dated 05/25/04  
An evaluation with Jose E. Rodriguez, M.D. dated 08/10/04  
Evaluations with Ben Tionson, M.D. dated 09/27/04, 06/08/05, 07/06/05, 08/03/05, 08/29/05, and 10/03/05  
Evaluations with Acxiti Buendia, M.D. dated 10/19/04, 11/19/04, 08/22/05, 10/14/05, 12/16/05, 01/13/06, and 02/10/06  
A Designated Doctor Evaluation with Victor Kumar-Misir, M.D. dated 11/02/04  
A request for a work hardening program from Ms. Baugher dated 12/07/04  
Evaluations with Kevin G. Berliner, M.D. dated 12/13/04 and 01/23/06  
A Functional Capacity Evaluation (FCE) with an unknown provider (no name or signature was available) dated 12/17/04  
Evaluations with H. Bernstein, M.D. dated 01/27/05, 03/17/05, 04/21/05, 05/19/05, 06/23/05, 07/21/05, and 08/18/05  
Psychological evaluations with Glen E. McClure, Ph.D. dated 06/13/05 and 09/14/05  
Individual progress notes with Ms. Baugher dated 07/13/05, 07/19/05, 08/04/05, 08/11/05, and 08/18/05

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Psychological progress notes with Paula Cooley, L.P.C. dated 10/10/05, 10/11/05, 10/12/05, 10/13/05, 10/14/05, 10/17/05, 10/18/05, 10/19/05, 10/20/05, and 10/21/05

A lumbar myelogram CT scan interpreted by Jim A. Cain, M.D. dated 12/06/05

Letters of non-authorization from Texas Mutual Insurance Company dated 02/07/06 and 02/20/06

A letter regarding the dispute from LaTreace Giles, R.N. at Texas Mutual Company dated 04/13/06

**Clinical History Summarized:**

On 02/10/04, Dr. Murphy recommended physical therapy and MRIs of the lumbar and cervical spine. CT scans of the cervical spine and head/brain interpreted by Dr. Kirk on 02/10/04 were unremarkable. An SSEP study interpreted by Dr. Ratinov on 02/10/04 was unremarkable. On 02/10/04, Ms. Baugher recommended 12 sessions of individual therapy and biofeedback. An MRI of the cervical spine interpreted by Dr. Kirk on 02/11/04 revealed spondylosis throughout the spine and a disc protrusion at C5-C6. An EMG/NCV study interpreted by Dr. Guana on 04/06/04 revealed bilateral carpal tunnel syndrome. On 05/19/04, Dr. Hershkowitz noted the patient had significant functional overlay. An MRI of the lumbar spine interpreted by Dr. Wright on 05/25/04 revealed disc degeneration from L3 to S1. An EMG/NCV study of the lower extremities interpreted by Dr. Guana on 06/22/04 revealed S1 radiculopathy on the right. On 08/10/04, Dr. Rodriguez recommended lumbar spine surgery and conservative treatment of the neck. On 09/20/04, Dr. Ortiz recommended an MRI of the left shoulder and possible lumbar and cervical epidural steroid injections (ESIs) since surgery had been denied. Dr. Kumar-Misir felt the patient was not at Maximum Medical Improvement (MMI) on 11/02/04 and recommended ESIs with possible surgery. Ms. Baugher requested work hardening on 12/07/04. On 12/13/04, Dr. Berliner recommended the ESIs and a lumbar discogram or CT myelogram. An FCE on 12/17/04 showed the patient was functioning at the sedentary light physical demand level. On 07/06/05, Dr. Tionson recommended cervical and lumbar ESI reconsiderations. Individual therapy was performed with Ms. Baugher from 07/13/05 through 08/18/05 for a total of five sessions. Dr. Buendia recommended a chronic pain management program on 08/22/05. A lumbar myelogram CT scan was recommended by Dr. Tionson on 08/29/05. On 09/14/05, Dr. McClure also recommended a pain management program. Psychological progress notes with Ms. Cooley were noted from 10/10/05 through 10/21/05 for a total of 10. A lumbar myelogram CT scan interpreted by Dr. Cain on 12/06/05 revealed epidural impression from L2 to S1, disc protrusions at L2-L3 and L3-L4, and mild to moderate findings at L4-L5 and L5-S1. On 01/23/06, Dr. Berliner recommended a lumbar discogram and possible cervical surgery. On 02/07/06 and 02/20/06, Texas Mutual Insurance Company wrote letters of non-authorization for cervical spine surgery.

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**Disputed Services:**

Anterior discectomy at C5-C6, bone graft, anterior instrumentation, ACDF at C5-C6, application of an interbody device, and application of a bone growth stimulator

**Decision:**

I agree with the requestor. The anterior discectomy at C5-C6, bone graft, anterior instrumentation, ACDF at C5-C6, application of an interbody device, and application of a bone growth stimulator would be reasonable and necessary.

**Rationale/Basis for Decision:**

The proposed anterior cervical discectomy and fusion at C5-C6 has been proposed for axial neck pain, caused by a blow to the head in 2004. The proposed ACDF at C5-C6 would be reasonable and necessary if there was an up to date MRI that indicated there had been no change in the patient's condition over the last two years. Recent publications, including an excellent study by Garvey et. al. in *The Journal of Spine*, which was quoted in the textbook The Spine-Rothman and Simeone, discusses the results in individuals with degenerative conditions for their axial problems. In my opinion, the proposed anterior discectomy at C5-C6, bone graft, anterior instrumentation, ACDF at C5-C6, application of an interbody device, and application of a bone growth stimulator is supported by current medical literature even in the absence of radiculopathy and would be reasonable and necessary as related to the original injury.

The rationale for the opinions stated in this report are based on clinical experience and standards of care in the area as well as broadly accepted literature which includes numerous textbooks, professional journals, nationally recognized treatment guidelines and peer consensus.

This review was conducted on the basis of medical and administrative records provided with the assumption that the material is true and correct.

This decision by the reviewing physician with Professional Associates is deemed to be a Division decision and order.

**YOUR RIGHT TO REQUEST A HEARING**

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.

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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. A request for a hearing should be faxed to 512-804-4011 or sent to:

Chief Clerk of Proceedings/Appeals Clerk  
TDI-Division of Workers' Compensation  
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.

I hereby verify that a copy of this Independent Review Organization's decision was sent to the respondent, the requestor, DWC, and the patient via facsimile or U.S. Postal Service this day of 04/27/06 from the office of Professional Associates.

Sincerely,

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Amanda Grimes  
Secretary/General Counsel