



PROFESSIONAL ASSOCIATES

NOTICE OF INDEPENDENT REVIEW

NAME OF PATIENT: _____
IRO CASE NUMBER: M2-06-1237-01
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: 05/23/06

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 employee's employer, the injured employee's insurance carrier, the utilization review agent, or

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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 MRI of the cervical spine interpreted by K.T. Bacon, M.D. dated 08/27/01
Evaluations with Jerry Blacklock, M.D. dated 09/10/01, 10/25/01, 11/29/01, 04/01/02, and 09/19/02
An operative report from Dr. Blacklock dated 09/21/01
A letter from Dr. Blacklock dated 09/24/01
X-rays of the cervical spine interpreted by Raman Mocharla, M.D. dated 11/26/01
An Employer's First Report of Injury or Illness dated _____
Evaluations with Dr. Blacklock dated 02/21/02 and 10/24/02
A cervical myelogram and CT scan interpreted by George Allibone, M.D. dated 03/26/02
An evaluation with Howard S. Derman, M.D. dated 04/26/02
A letter from Dr. Derman dated 08/16/02
An x-ray of the cervical spine interpreted by Hani A. Haykal, M.D. dated 09/19/02
An MRI of the cervical spine interpreted by Dr. Mocharla dated 10/16/02
Evaluations with Raul Sepulveda, M.D. dated 02/05/03, 02/28/03, 03/18/03, 03/26/03, 04/23/03, 05/01/03, 05/21/03, 06/18/03, 07/10/03, 08/07/03, 08/13/03, 09/04/03, 10/02/03, 10/08/03, 10/30/03, 12/03/03, 01/07/04, 02/04/04, 03/03/04, 03/19/04, 04/16/04, 05/06/04, 05/07/04, 05/20/04, 06/04/04, 07/02/04, 08/18/04, 08/19/04, 09/24/04, 11/10/04, 11/12/04, 01/12/05, and 01/20/05
A notice of independent review determination from Michael S. Lifshen, M.D. dated 09/10/03
A Required Medical Evaluation (RME) with Ronald De Vere, M.D. dated 09/22/03
A laboratory study dated 10/03/03
A cervical discogram and CT scan interpreted by Eugene Shih, M.D. dated 03/04/04
A physical therapy progress note from an unknown provider (the signature was illegible) dated 03/19/04
A letter from Corvel dated 03/24/04
An orthopedic review with William C. Watters, III, M.D. dated 04/01/04
Laboratory studies dated 04/16/04

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An RME with Benjamin Agana, M.D. dated 07/28/04
An EMG/NCV study interpreted by Samuel J. Alianell, M.D. dated 09/30/04
An evaluation with Thomas J. Cartwright, M.D. dated 10/04/04
Designated Doctor Evaluations with Becky Personett, M.D. dated 11/02/04 and 06/28/05
An operative report with Dr. Sepulveda dated 12/07/04
Evaluations with Kenneth G. Berliner, M.D. dated 02/18/05, 03/03/05, 05/16/05, 08/19/05, 09/16/05, 10/28/05, 12/05/05, 01/06/06, and 02/06/06
Letters of medical necessity from Dr. Berliner dated 04/08/05 and 04/03/06
A letter of medical necessity from Sady Ribeiro, M.D. dated 04/21/05
An operative report from Dr. Ribeiro dated 05/12/05
Physical therapy evaluations with R. Jerez, P.T. dated 05/17/05 and 06/14/05
Physical therapy with Therapist Jerez dated 05/17/05, 05/18/05, 05/20/05, 05/23/05, 05/24/05, 05/25/05, 05/31/05, 06/07/05, 06/08/05, 06/09/05, 06/13/05, 06/14/05, and 06/16/05
Evaluations with Dr. Ribeiro dated 05/19/05, 06/02/05, 06/30/05, 07/28/05, 12/15/05, and 03/07/06
An evaluation with William Lowery, P.A.-C. for Dr. Berliner dated 06/13/05
A prospective review of medical examination with William C. Maxwell, M.D. dated 07/22/05
A telephone conference with Dr. Berliner dated 09/14/05
Computerized muscle testing (CMT) and range of motion testing with an unknown provider (no name or signature was available) dated 09/16/05
Evaluations with Vladimir Redko, M.D. dated 10/18/05, 11/08/05, and 01/05/06
An RME performed by Michael D. Ciepiela, M.D. dated 03/09/06
Letters of non-authorization from Genex dated 03/14/06 and 03/28/06
A supplement report from Dr. Ciepiela dated 04/06/06
Letters from John V. Fundis at Downs Stanford, P.C. Attorneys at Law dated 04/28/06 and 05/11/06
An undated comment summary regarding Botox injections

Clinical History Summarized:

An MRI of the cervical spine interpreted by Dr. Bacon on 08/27/01 revealed a very extensive herniation at C4-C5 and milder bulges or protrusions at C3-C4, C5-C6, and C6-C7. On 09/21/01, Dr. Blacklock performed a cervical discectomy, compression, arthrodesis, and spinal instrumentation at C4-C5. A cervical myelogram CT scan interpreted by Dr. Allibone on 03/26/02 revealed disc herniations at C4-C5, C5-C6, and C6-C7 and poor incorporation of the graft at C4-C5. An MRI of the cervical spine interpreted by Dr. Mocharla on 10/16/02 revealed

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the fusion changes at C4-C5 and multilevel degenerative disease. Dr. Sepulveda performed a cervical discogram on 02/28/03 that showed abnormalities at C3-C4, C5-C6, and C6-C7 with the largest lesion being at C5-C6. On 09/22/03, Dr. DeVere recommended a TENS unit, continued Elavil, a possible trial of Botox, and no discogram. A cervical discogram interpreted by Dr. Shih on 03/04/04 revealed partial concordant pain and annular tears at C2-C3, C3-4, and C5-C6. Laboratory studies on 04/16/04 revealed high white blood cell and absolute neutrophil counts. On 07/28/04, Dr. Agana recommended weaning the narcotic medication. On 08/18/04, Dr. Sepulveda placed the patient at Maximum Medical Improvement (MMI) with a 15% whole person impairment rating, but cervical epidural steroid injections (ESIs) were recommended. An EMG/NCV study of the upper extremities interpreted by Dr. Alianell on 09/30/04 was unremarkable. Dr. Personett felt the patient was not at MMI on 11/02/04 and recommended ESIs, a pain management program, and possible surgery. A cervical ESI was performed by Dr. Sepulveda on 12/07/04. Dr. Ribeiro performed a cervical ESI on 05/12/05. Physical therapy was performed with Therapist Jerez from 05/17/05 through 06/16/05 for a total of 13 sessions. On 06/28/05, Dr. Personett felt the patient was at statutory MMI as of 05/24/05 with a 5% whole person impairment rating, but was not at medical MMI. On 06/30/05, Dr. Ribeiro recommended Botox injections. Dr. Redko recommended cervical facet blocks on 10/18/05 and 11/08/05. On 01/06/06, Dr. Berliner recommended a spinal cord stimulator trial. On 03/07/06, Dr. Ribeiro continued to recommend Botox injections. Letters of non-authorization of the Botox injections were provided by Genex on 03/14/06 and 03/28/06. On 04/03/06, Dr. Berliner wrote a letter of medical necessity for the Botox injections. On 05/11/06, Mr. Fundis from Downs and Stanford Attorneys at Law wrote a letter stating the Botox injection should be denied.

Disputed Services:

Botox injections at the pericranial and cervical muscles

Decision:

I disagree with the requestor. The Botox injections to the pericranial and cervical muscles would be neither reasonable nor necessary.

Rationale/Basis for Decision:

This individual has chronic neck pain. He has had two cervical epidural steroid injections (ESIs) with no significant relief and has had no physical therapy. There were no positive physical

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findings. She had a C4-C5 fusion in 2001 and has continued to have pain that has no objective physical findings. The current treating physician has recommended Botox injections. The scientific research has been very scanty in regard to the use of Botox injections. The studies dictated by Dr. Berliner were small case studies with very poor follow-up and very poor measures of pain. There was no high quality peer review study in the scientific literature that documented the use of Botox injections for chronic cervical pain. In my opinion, the Botox injections at the pericranial and cervical muscles were neither reasonable nor necessary, as their efficacy has not been proven.

Medical criteria used to derive at the decision: I have queried PubMedo or any high quality studies in regard to the use of Botox injections for chronically pain. Although this study Dr. Berliner noted is found in the literature; however, those are case studies with few patients and no controlled group. There are nonobjective measures of pain relief, therefore, there was no scientific evidence to document the efficacy of Botox in this situation.

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.

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

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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 05/23/06 from the office of Professional Associates.

Sincerely,

Lisa Christian
Secretary/General Counsel