

# MCMC

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

<b>Date:</b>	<b>06/09/2006</b>
<b>Injured Employee:</b>	
<b>Address:</b>	
<b>MDR #:</b>	<b>M2-06-1311-01</b>
<b>DWC #:</b>	
<b>MCMC Certification #:</b>	<b>IRO 5294</b>

### REQUESTED SERVICES:

Please review the item(s) in dispute: Pre-authorization request for low-pressure lumbar discogram L2-S1 with post disco CT (62290, 72131).

### 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 06/09/2006, concerning the medical necessity of the above referenced requested service, hereby finds the following:

The requested discogram study from L2 to S1 with post discography CT is not medically necessary.

### CLINICAL HISTORY:

This 49-year-old female was evaluated on \_\_\_\_\_ for complaints of pain in her right wrist and forearm after and alleged fall on \_\_\_\_\_. She had no pain for 10-days. Three days prior to the office visit she allegedly awoke in the middle of the night with pain that had become severe despite the use of Advil. She had a sensation of tightness and fullness in her hand and fingers. She complained of tenderness from the elbow to the long finger. Stretching and squeezing the hand felt "good".

**REFERENCES:**

Lumbar fusion versus non-surgical treatment for chronic low back pain: a multicenter randomized controlled trial from the Swedish Lumbar Spine Study Group: Fritzell, P., et al.: Spine (2002): 27: 1680-1686. (Volvo Award Winner in clinical studies).

Current Concepts Review - Lumbar Arthrodesis for the Treatment of Back Pain: J of Bone & Joint Surgery: 81:716-30 (1999). Edward N. Hanley, Jr., M.D. And Stephen M. David, M.D., Charlotte, North Carolina

**RATIONALE:**

The injured individual had no objective clinical findings though she complained of pain when the hands were compressed in the praying position. She was sent to physical therapy (PT) and given Celebrex.

Dr. Garza, chiropractor, evaluated her on 03/18/2004 for complaints of headaches and pain in her neck, mid and low back, right shoulder and arm, right leg, knee and foot. She claimed that as she turned she stepped in the drain hole and fell and allegedly hit her head and right side though her arms were apparently outstretched to catch herself. She was believed to have mild carpal tunnel syndrome (CTS) even though she had no objective clinical findings of CTS. It is not clear why she sought chiropractic care. She claimed to have pain in all the areas mentioned earlier and had complaints of stiffness and difficulty in moving these regions.

The chiropractor referred her to pain management and Dr. Lall evaluated her on 03/19/2004. She now complained of constant neck pain radiating to both hands and severe pain at a 10/10 level in the right upper extremity. She also now complained of low back pain radiating to both lower extremities to both feet with tingling and numbness. She also complained of bilateral knee pain. On examination she was noted to be obese. She had a full range of motion (ROM) of the cervical and lumbar spine. She complained of pain with certain movements. She was thought to have some impairment of sensation to pin prick along right C6 and C7 and L5.

The x-rays of the cervical spine on 04/08/2004 revealed moderate cervical spondylosis with facet and uncovertebral arthropathy and spurs resulting in bone foraminal stenosis. There was mild lumbar spondylosis with facet arthropathy from L3 to S1 more marked at the two lower levels. There were some degenerative changes at T11/12.

The MRI study of 05/05/2004 revealed only mild disc bulges from L4 to S1 with mild foraminal stenosis at L4/5, and facet degenerative changes at both levels. The MRI of the cervical spine on 05/05/2004 revealed disc bulge at C3/4 with uncinat hypertrophy, broad disc protrusion with osteophytic ridge at C4/5 and C5/6 and foraminal stenosis on the left at both levels, disc bulge and bilateral foraminal stenosis at C6/7 level.

The MRI of the left wrist revealed a non-specific cyst in the first metacarpal. The MRI of the right wrist revealed contusion and fluid in the first carpometacarpal (CMC) joint and a focal tear of the volar radial aspect of the triangular fibrocartilage complex (TFCC).

The electromyogram (EMG)/nerve conduction velocity (NCV) studies of 05/17/2004 revealed a cervical radiculopathy affecting the left C6 nerve root and possibly to a lesser extent of the C5 nerve root based on the presence of fibrillation potentials. There was possible radiculopathy of the left L5 nerve root based on an absent peroneal f-wave.

Dr. Esses (Orthopedics) evaluated her on 09/13/2004 for back and bilateral leg pain. There was only spasm and limited ROM of the lumbar spine with no objective clinical findings of nerve root compression or tension. Dr. Esses reviewed the imaging studies and he did not see any evidence of nerve root compression on the lumbar study, but believed there was “significant nerve root compression” in the cervical spine. This conclusion differs from that given by the radiologist.

Dr. Berliner (Orthopedics) evaluated her on 12/22/2004 for complaints of neck and back pain at an 8/10 level. She claimed to have pain radiating to both heels, and numbness and tingling in the thighs. The neck pain apparently radiated to her right upper extremity. The wrist pain had resolved. On 01/26/2005 Dr. Berliner recommended epidural steroid injection (ESI) in the neck and low back though she had no objective clinical findings of nerve root compression. She was also to take Ultram and Zanaflex. The pain management specialist, Dr. Ribeiro, worked in the same office as Dr. Berliner and evaluated the injured individual on 02/03/2005.

She had the first ESI on 10/13/2005 and per the note of 11/22/2005 Dr. Berliner noted that she did not have much relief. The injured individual now weighed 236 pounds and had been advised to lose weight. Despite the absence of any response to the ESI she continued to receive ESIs in 2006. On 02/28/2006 the injured individual stated that she could not live with the pain. The only clinical findings were limited ROM secondary to pain. On 03/07/2006 Dr. Riberio recommended a discogram to determine the need for surgery. Dr. Berliner quotes snippets from various articles in his letter dated 04/03/2006 recommending lumbar fusion. Hence the discogram was, per Dr. Berliner, warranted to “exclude non-affected levels from proposed surgery”.

The issue in this case is that the injured individual has age related changes in her lumbar and cervical spine. Her initial complaints had nothing to do with her neck or back. She then decided to seek chiropractic care and this started the chain of referrals to pain management and obtaining MRI and EMG/NCV studies. She saw one orthopedic surgeon who believed she was not a surgical candidate.

She then sought another opinion and received ESIs that were neither indicated nor effective. Her symptoms have not been consistent and they are not commensurate with the imaging findings or the proposed discogram study. She is not a candidate for any invasive testing or treatment given her inconsistent history and complaints and her constantly seeking other opinions regardless of the absence of a clear cut organic lesion commensurate with her symptoms.

The recommended course of treatment would be to lose considerable weight and be involved in a regular conditioning and back stabilization program. This would include postural, stretching, strengthening and stabilization exercises. She should participate in a regular walking program

and also return to some form of gainful employment. She should definitely not have any discogram study.

The following excerpts from an article by Hanley, E, in the JBJS 2006 clearly raises concerns about the belief that invasive treatment is a successful method of management of chronic low back pain secondary to multilevel degenerative lumbar spondylosis.

“The available information on the diagnosis and treatment of low-back pain lacks objectivity, as most studies have been retrospective, uncontrolled, and predominantly focused on operative technique. Most investigators have used nonvalidated outcome measures that have reflected the biases of their proponents.”

“So-called facet disease and degenerative instability are extremely rare, and these diagnoses should seldom be used as indications for operative intervention. When they are present, stabilization with use of posterior instrumentation and arthrodesis is appropriate.”

“The pertinent issues revolve around the treatment of idiopathic and discogenic low-back pain. Major controversies center around which treatment is best when nonoperative measures have failed. Opponents of operative treatment believe that the outcomes of most or all procedures fall below the threshold needed to justify operative intervention, as only about 50 percent of patients have a successful result with regard to decreased pain, increased function, and ability to return to work. Proponents of operative treatment maintain that these patients have no other options, that some improvement in pain and function is important, and that operative intervention is therefore warranted. They believe that full relief of disability is too strict a criterion or goal.”

“We think that most patients who have acute or chronic idiopathic or discogenic low-back pain should be managed nonoperatively. Patients who have refractory pain with severe incapacity and those who have imaging-confirmed morphological changes and concordant symptoms may be managed successfully with anterior disc ablation and structural arthrodesis.”

“Some improvement occurs as a result of operative treatment in about 75 percent of patients, but major or complete relief of pain and recovery of function are seen in 50 percent or less. Each physician and each patient must assess these issues in a forthright manner and determine what is appropriate under the circumstances.”

Multilevel fusion has never been reported to be successful in alleviating chronic low back pain. Furthermore, in this particular patient, who is inconsistent in her description of complaints and who has no focal findings of sufficient magnitude to warrant invasive treatment the requested discogram is completely inappropriate and not warranted. The changes on the MRI were not of sufficient magnitude to warrant the discogram study or even consider invasive treatment.

**RECORDS REVIEWED:**

- Notification of IRO Assignment dated 05/16/06
- MR-117 dated 05/16/06, 04/28/05, 04/14/05

- MR-108 dated 04/20/05
- MR-100 dated 04/28/06, 03/28/05
- DWC-60
- DWC-69: Report of Medical Evaluation dated 04/21/06 with attachment from Kenneth Berliner, M.D.
- DWC-73: Work Status Reports dated 03/16/04 through 02/28/06 and two with return to work dates of 08/02/04 and 09/02/04
- MCMC: IRO Medical Dispute Resolution Prospective dated 05/26/06
- MCMC: IRO Acknowledgment and Invoice Notification Letter dated 05/16/06
- Arkansas Claims Management: Letter dated 05/23/06 from Raina Robinson, IRO Coordinator
- Hoffman Kelley, L.L.P.: Letters dated 05/10/06, 04/06/05
- Churchill Evaluation Center: Letter dated 04/25/06 from Erin Brannon, Clinic Director
- Texas Orthopedic & Aquatic Therapy Institute: Impairment Evaluation 4<sup>th</sup> Edition dated 04/13/06
- Lonestar Orthopedics: Letter of Medical Necessity for Preoperative Lumbar Discogram dated 04/03/06 from Kenneth Berliner, M.D.
- UniMed Direct: Reports dated 03/21/06, 03/14/06, 03/04/05, 02/17/05
- Lonestar Orthopedics: Office Visit notes dated 03/07/06, 12/01/05, 11/03/05 from Sady Ribeiro, M.D.
- Lonestar Orthopedics: Orthopedic Reports dated 02/28/06, 11/22/05, 01/26/05, 12/22/04 from Kenneth Berliner, M.D.
- The Palladium for Surgery: Anesthesia Records dated 02/01/06, 10/13/05
- The Palladium For Surgery Houston: Operative Reports dated 02/01/06, 10/13/05 from Sady Ribeiro, M.D.
- Texas Orthopedic and Aquatic Therapy Institute: Therapy notes (handwritten) dated 12/08/05, 12/06/05, 11/29/05
- Claims Management: Form letter dated 11/21/05
- Ziro C: Letter dated 05/23/05 from Dr. Roger Glenn Brown
- Parker Healthcare Management Organization: Notice of Assignment for Independent Review dated 04/28/05
- DWC: Letter dated 04/27/05 from Medical Review Division
- Lonestar Orthopedics: History and Physical dated 02/03/05 from Sady Ribeiro, M.D.
- Patient's Daily Progress Report/Treatment Notes/Documentation SOAP Notes (handwritten) dated 10/01/04
- Baylor College of Medicine: Letter dated 09/20/04 from Stephen Esses, M.D.
- Stephen Esses, M.D.: Office note dated 09/13/04
- Houston Pain Consultants: Follow-Up Evaluations dated 05/21/04, 04/30/04, 04/02/04 from Arun Lall, M.D.
- Optimum Medical Testing: Electrodiagnostic Evaluation dated 05/17/04
- North Houston Imaging Center: Left wrist MRI, right wrist MRI, cervical spine MRI, lumbar spine MRI dated 05/05/04
- Downtown Plaza Imaging Center: Cervical spine and lumbar spine series dated 04/08/04

- Houston Pain and Injury Clinic: Handwritten doctor's notes dated 03/22/04 through 04/28/04 and one dated 07/30/04 (month not completely legible and appears to be out of sequence)
- Houston Pain Consultants: Initial Evaluation dated 03/19/04 from Arun Lall, M.D.
- Houston Pain and Injury Clinic: Initial Office Visit dated 03/18/04 from Joe Garza, D.C.
- Concentra Medical Center Astrodome: Right hand, wrist, forearm radiographs dated 03/16/04
- Concentra Medical Centers: Transcription Doctors First Report dated 03/16/04 from James Strangmeier, M.D.
- Claims Management: Independent Review Organization Summary dated 03/03/04
- Texas Orthopedic and Aquatic Therapy: Physical Therapy Evaluation (handwritten) dated 03/03/04
- Employer's First Report of Injury or Illness dated 03/03/04
- Undated Physician Activity Status Report with next visit date of 03/23/04
- Article entitled, "A Prospective Controlled Study of Limited Versus Subtotal Posterior Discectomy, SPINE Volume 31, 11/06/06, pages 653 through 657
- Article entitled, "Spine An international journal for the study of the spine", pages 1 through 18
- Article entitled, "Surgical Considerations", pages 305 through 310
- Article entitled, "Evidence Citations"

The reviewing provider is a **Licensed/Boarded Orthopedic Surgeon** and certifies that no known conflict of interest exists between the reviewing Orthopedic Surgeon 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**

**9th day of JUNE 2006.**

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

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