



PROFESSIONAL ASSOCIATES

NOTICE OF INDEPENDENT REVIEW

NAME OF PATIENT: _____
IRO CASE NUMBER: M2-06-1497-01
NAME OF REQUESTOR: RS Medical
NAME OF PROVIDER: Robert Henderson, M.D.
REVIEWED BY: Board Certified in Orthopedic Surgery
IRO CERTIFICATION NO: IRO 5288
DATE OF REPORT: 07/06/06

Dear RS Medical:

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

M2-06-1497-01

Page Two

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 operative report from Paul Vaughan, M.D. dated 08/23/02
An EMG/NCV study interpreted by William Noran, M.D. dated 03/27/03
A cervical myelogram and post myelogram CT scan interpreted by Ellis F. Robertson, M.D. dated 08/28/03
X-rays of the lumbar spine interpreted by Michael I. Ginsburg, M.D. dated 09/11/03
An EMG/NCV study interpreted by Meyer L. Proler, M.D. dated 12/23/03
A lumbar myelogram interpreted by Steven L. Casey, D.O. dated 03/09/04
A post myelogram CT scan interpreted by Dr. Ginsburg dated 03/09/04
An operative report with John B. Payne, M.D. dated 04/28/04
An MRI of the lumbar spine interpreted by Dr. Robertson dated 05/27/04
Evaluations with Deepak V. Chavda, M.D. dated 01/19/05, 01/26/05, 02/09/05, 02/11/05, 02/23/05, 03/18/05, 04/06/05, 06/01/05, 07/13/05, 07/27/05, 08/17/05, 08/31/05, and 09/28/05
A lumbar myelogram interpreted by Karen M. Perl, D.O. dated 03/03/05
A post myelogram CT scan interpreted by David Frank, M.D. dated 03/03/05
An EMG/NCV study interpreted by Jonathan E. Walker, M.D. dated 03/08/05
Evaluations with Robert J. Henderson, M.D. dated 04/18/05, 11/22/05, 01/09/06, 03/13/06, and 06/05/06
An MRI of the right shoulder interpreted by Jonathan Kern, M.D. dated 08/09/05
An MRI of the right shoulder interpreted by Nicholas G. Iwasko, M.D. dated 08/30/05
Prescriptions written by Dr. Henderson dated 11/09/05 and 01/23/06
RS Medical patient usage reports dated 11/20/05, 11/25/05, 11/26/05, 11/27/05, 12/03/05, 12/04/05, 12/05/05, 12/07/05, 12/10/05, 12/11/05, 12/16/05, 12/28/05, 12/30/05, 01/01/06, 01/06/06, 01/07/06, 01/13/06, 01/23/06, 01/27/06, 01/30/06, 02/08/06, 02/15/06, 02/17/06, 02/20/06, 02/26/06, 03/18/06, 03/20/06, and 03/22/06
A letter of medical necessity from Dr. Henderson dated 01/23/06
A letter from Frank J. Garcia, M.D. from Medical Review Institute of America dated 02/16/06
Letters of denial from Liberty Mutual dated 02/16/06, 04/18/06
Letters of appeal from Katie Banks, N.T., S.T. dated 02/27/06 and 03/13/06

M2-06-1497-01

Page Three

A letter written "To Whom It May Concern" from the patient dated 03/27/06

A letter from Bruce L. Gillingham (no credentials were listed) at Medical Review Institute of America dated 04/18/06

A letter of dispute from Carolyn Guard, R.N.C. at Liberty Medical Utilization Department dated 06/05/06

Clinical History Summarized:

On 08/23/02, Dr. Vaughan performed lumbar spine surgery from L4 to S1 on 08/23/02. An EMG/NCV study interpreted by Dr. Noran on 03/27/03 revealed left tibial and right peroneal neuropathy with evidence of an interruption in the nerve pathway on the left. A cervical myelogram CT scan interpreted by Dr. Robertson on 08/28/03 revealed small disc protrusions at C3-C4 and C5-C6. X-rays of the lumbar spine interpreted by Dr. Ginsburg on 09/11/03 revealed good positioning of the screws and bone grafts between L4 and S1 with possible lucency between the graft at L4-L5 and the inferior endplate of L4. An EMG/NCV study interpreted by Dr. Proler dated 12/23/03 revealed left L5 radiculopathy. A post lumbar myelogram CT scan interpreted by Dr. Ginsburg on 03/09/04 revealed good integration of the bone grafts at L4-L5 and L5-S1. There was a disc bulge at L3-L4. Dr. Payne performed lumbar surgery on 04/28/04. A lumbar MRI interpreted by Dr. Robertson on 05/27/04 revealed large fluid collection from the mid L4 to upper S1 level and abnormal soft tissue from L1 to L4. On 01/26/05, Dr. Chavda performed the shoulder steroid injection. A lumbar myelogram with Dr. Perl on 03/03/05 revealed blunting of the nerve roots and scar tissue at multiple levels. A post myelogram CT scan interpreted by Dr. Frank on 03/03/05 revealed no recurrent disc herniation with multilevel degenerative facet disease. An EMG/NCV study interpreted by Dr. Walker on 03/08/05 revealed C5 radiculopathy on the right and trauma or entrapment of the left sural nerve at the ankle. On 04/06/05, Dr. Chavda rescinded the request for the third ESI. Dr. Chavda recommended a right shoulder MRI on 07/13/05 and continued mediations. Bilateral SI joint injections were performed by Dr. Chavda on 07/27/05 and recommended right shoulder surgery. An MRI of the right shoulder interpreted by Dr. Kern on 08/09/05 revealed a supraspinatus tendon tear and effusion with mild osteoarthritis. Another MRI of the right shoulder interpreted by Dr. Iwasko on 08/30/05 revealed the supraspinatus tendon tear and moderate lateral acromion downsloping. On 08/31/05, Dr. Chavda recommended a dispute regarding the right shoulder surgery. On 11/09/05 and 01/23/06, Dr. Henderson prescribed an RS Medical stimulator unit. The stimulator unit was used from 11/20/05 through 03/22/06 for a total of 28 sessions. On 01/09/06, Dr. Henderson recommended a work hardening program. On 01/23/06, Dr. Henderson wrote a letter of medical necessity for continued use of the RS Muscle stimulator unit. On 02/16/06 and 04/18/06, Liberty Mutual wrote letters of denial for the stimulator unit. On 06/05/06, Ms. Guard from Liberty Mutual indicated their position would not change regarding the denial.

M2-06-1497-01

Page Four

Disputed Services:

Purchase of an RS-4i muscle stimulator

Decision:

I disagree with the requestor. The purchase of an RS-4i muscle stimulator would not be reasonable or necessary.

Rationale/Basis for Decision:

The purchase of an RS-4i muscle stimulator would be neither reasonable nor necessary. This is an individual who has failed to improve despite surgical intervention. She has chronic pain. There was no scientific medical evidence indicating a muscle stimulator would be useful in chronic pain. The scientific evidence showed that such a muscle stimulator would be good only in very specific cases of muscle atrophy and that was not the case in this individual. The *ACOEM Guideline* and North American Spine Society Phase III *Multidisciplinary Care Guidelines* both mitigate against the use of a muscle stimulation in this circumstance.

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.

M2-06-1497-01

Page Five

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 07/06/06 from the office of Professional Associates.

Sincerely,

Lisa Christian
Secretary/General Counsel