



# PROFESSIONAL ASSOCIATES

## NOTICE OF INDEPENDENT REVIEW

**NAME OF PATIENT:** \_\_\_\_\_  
**IRO CASE NUMBER:** M2-06-1639-01  
**NAME OF REQUESTOR:** Robert Henderson, M.D.  
**NAME OF PROVIDER:** Robert Henderson, M.D.  
**REVIEWED BY:** Board Certified in Orthopedic Surgery  
**IRO CERTIFICATION NO:** IRO 5288  
**DATE OF REPORT:** 08/03/06

Dear Dr. Henderson

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 emergency room visit with Clinton Burns, D.O. dated 02/07/05

A nursing note from Lois Kennedy, R.N. dated 02/07/05

Evaluations with R. H. LeGrand, M.D. dated 02/10/05, 02/21/05, and 03/21/05

An MRI of the lumbar spine interpreted by J. Chris Cole, M.D. dated 03/18/05

A TWCC-53 form dated 04/14/05

Evaluations with William P. Hillger, D.C. dated 04/25/05, 06/30/05, and 10/24/05

Evaluations with Robert J. Henderson, M.D. dated 04/27/05, 08/24/05, 10/12/05, 11/03/05, 12/07/05, 01/20/06, 03/22/06, and 04/28/06

Evaluations with an unknown provider (the signature was illegible) dated 05/02/05, 11/30/05, and 03/06/06

Designated Doctor Evaluations with Gilbert Mayorga, Jr., M.D. dated 05/10/05, 10/11/05, and 02/09/06

An EMG/NCV study interpreted by an unknown provider (the signature was illegible) dated 05/16/05

A Functional Capacity Evaluation (FCE) with an unknown provider (no name or signature was available) dated 06/01/05

An evaluation with Susan Van de Water, M.D. dated 06/06/05

An FCE with Dr. Hillger dated 07/01/05

A Physical Performance Evaluation (PPE) with Dr. Hillger dated 08/05/05

An MRI of the lumbar spine interpreted by Sajjadul Islam, M.D. dated 09/09/05

Evaluations with Winston Whitt, M.D. dated 09/26/05, 01/06/06, and 04/14/06

A procedure report from Carl J. D'Agostino, M.D. dated 10/03/05

An FCE with Sonia Seal, R.P.T. dated 10/18/05

An evaluation with Bob Hollander, D.C. dated 11/02/05

A lumbar myelogram CT scan interpreted by Dr. Islam dated 11/15/05

An operative report from Dr. D'Agostino dated 02/06/06

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A CT scan of the lumbar spine interpreted by Scott Sheward (no credentials were listed) dated 02/06/06

An evaluation with David Doll, D.C. dated 03/10/06

A request for surgery preauthorization from Dr. Henderson dated 04/21/06

A PPE with Dr. Doll dated 04/28/06

A letter of non-authorization for surgery from Peggy Steed, L.V.N. at Texas Mutual Insurance Company dated 04/28/06

Another letter of non-authorization for surgery from Esther Garza, L.V.N. at Texas Mutual dated 05/24/06

A letter from LaTreace Giles, R.N. at Texas Mutual dated 07/18/06

**Clinical History Summarized:**

On 02/07/05, Dr. Burns gave the patient Lortab and Flexeril. An MRI of the lumbar spine interpreted by Dr. Cole on 03/18/05 was normal other than mild degenerative changes that were consistent with age. On 04/25/05, Dr. Hillger recommended chiropractic therapy three times a week for four weeks. On 04/27/05, Dr. Henderson recommended a lumbar epidural steroid injection (ESI). Dr. Mayorga felt the patient was not at MMI on 05/10/05 and recommended ESIs with post-injection therapy. An NCV study interpreted by an unknown provider on 05/16/05 revealed abnormal motor neuropathic changes and lumbar radiculopathy. An FCE with an unknown provider on 06/01/05 determined the patient was functioning at the light physical demand level. Dr. Van de Water reviewed an EMG on 06/06/05 and noted bilateral L5 radiculopathy. Another FCE with Dr. Hillger on 07/01/05 determined the patient was still functioning at a light physical demand level. A PPE with Dr. Hillger on 08/01/05 determined the patient was at the medium physical demand level. On 08/24/05, Dr. Henderson recommended a repeat lumbar MRI and repeat lumbar ESI. An MRI of the lumbar spine interpreted by Dr. Islam on 09/09/05 revealed only minimal spondylosis throughout and a minimal disc bulge at L4-L5 and L5-S1. On 10/03/05, Dr. D'Agostino performed a lumbar ESI. On 10/11/05, Dr. Mayorga continued to feel the patient was not at MMI. An FCE with Ms. Seal on 10/18/05 determined the patient was at the light physical demand level. A lumbar myelogram interpreted by Dr. Islam on 11/15/05 was normal. A post myelogram CT scan interpreted by Dr. Islam on 11/15/05 revealed minimal lumbar spondylosis throughout and a minimal disc bulge at L5-S1. On 02/06/06, Dr. D'Agostino performed a lumbar discogram from L3 to S1 with strong pain provocation at L5-S1. A post discogram CT scan interpreted by Dr. Sheward on 02/06/06 was normal. On 02/09/06, Dr. Mayorga continued to feel the patient was not at MMI and recommended possible surgical intervention. PPEs with Dr. Doll on 03/10/06 and 04/28/06 indicated the patient

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functioned in the medium physical demand level. Surgery was recommended by Dr. Henderson on 03/22/06. On 04/21/06, Dr. Henderson submitted a request for preauthorization for the surgery. Ms. Steed and Ms. Garza wrote letters of non-authorization for surgery on 04/28/06 and 05/24/06. On 07/18/06, Ms. Giles wrote a letter regarding dispute of the non-authorization and stated the carrier maintained its position.

**Disputed Services:**

Anterior interbody fusion at L5-S1, retroperitoneal exposure and discectomy at L5-S1, anterior interbody fixation at L5-S1, posterior decompression at L5-S1, transverse process fusion at L5-S1, posterior internal fixation at L5-S1, bone graft allograft, bone graft, autograft in situ, bone graft, autograft, iliac crest, bone marrow aspirate, and a Cybertech TLSO

**Decision:**

I disagree with the requestor. The anterior interbody fusion at L5-S1, retroperitoneal exposure and discectomy at L5-S1, anterior interbody fixation at L5-S1, posterior decompression at L5-S1, transverse process fusion at L5-S1, posterior internal fixation at L5-S1, bone graft allograft, bone graft, autograft in situ, bone graft, autograft, iliac crest, bone marrow aspirate, and a Cybertech TLSO would not be reasonable or necessary.

**Rationale/Basis for Decision:**

I do not believe that the proposed procedure is medically reasonable or necessary. This patient has never been treated appropriately with aggressive strengthening of his lumbar spine. The patient was treated solely with chiropractic care. The diagnostic information that has been obtained is not adequate on which to base the recommendation for a spinal surgical procedure. The discogram was done non-diagnostically, as there was no dye within the disc. This is more than not an annular injection and if the injection had been done into the disc, it is unknown whether the patient would have had the severe pain that he did. Clearly this is a non-diagnostic study, and one cannot base surgical therapy on this. Furthermore, this individual has a near normal MRI. By that, I mean there was no significant degenerative change. When fusion surgery is successful in the treatment of degenerative disease, it is for those individuals with severe disability due to significant anatomic changes. This patient does not have the radiographic criteria for which spinal surgery should be performed. Lastly, the procedure in itself is

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repetitive. The patient does not need a Cybertech brace after adequate internal fixation. The patient does not need allografts, local grafts, bone marrow aspirate, as these are all repetitive. The retroperitoneal exposure is a portion of the anterior discectomy. In my opinion, the patient has not been treated appropriately, has not been diagnosed appropriately, and is not a candidate for fusion surgery at this time. The proposed procedure is unnecessary.

The North American Spine Society III Clinical Guidelines For Multidisciplinary Spine Providers was reviewed, especially on the applicability and utilization of discography. The ISES Guidelines were also reviewed for the applicability and utilization of discography. Fritzell, Hagg, et. al., Swedish Lumbar Spinal Study Group *Spine* 27(11), June, 2002, Pages 1131-41; this award winning paper points out that surgery is indicated only for highly disabled patients in whom all other treatments have been completed.

Jay Brox, et. al. proved in *Spine* 28(17) pgs. 1913-21 in a randomized clinical trial that individuals that were not sufficiently disabled and did not have sufficient anatomic criteria, did not do well with spinal surgery, and in fact, did well with cognitive intervention and exercises.

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.

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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 08/03/06 from the office of Professional Associates.

Sincerely,

Lisa Christian  
Secretary/General Counsel