

IRO America Inc.

An Independent Review Organization

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August 2, 2006

TDI-DWC Medical Dispute Resolution

Fax: (512) 804-4868

Patient: _____

TDI-DWC #: _____

MDR Tracking #: M2-06-1640-01

IRO #: 5251

IRO America Inc. (IRO America) has been certified by the Texas Department of Insurance as an Independent Review Organization. The TDI, Division of Workers' Compensation (DWC) has assigned this case to IRO America for independent review in accordance with DWC Rule 133.308 which allows for medical dispute resolution by an IRO.

IRO America has performed an independent review of the proposed care to determine if the adverse determination was appropriate. In performing this review, all relevant medical records and documentation utilized to make the adverse determination, along with any documentation and written information submitted, was reviewed.

The independent review was performed by a matched peer with the treating doctor; the Reviewer is a credentialed Panel Member of IRO America's Medical Knowledge Panel who is a licensed MD, board certified and specialized in Orthopedic Surgery. The reviewer is on the DWC Approved Doctor List (ADL).

The IRO America Panel Member/Reviewer is a health care professional who has signed a certification statement stating that no known conflicts of interest exist between the Reviewer 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 carriers health care providers who reviewed the case for decision before referral to IRO America for independent review. In addition, the reviewer has certified that the review was performed without bias for or against any party to the dispute.

RECORDS REVIEWED

Notification of IRO Assignment, records from the Requestor, Respondent, and Treating Doctor(s), including but not limited to: 2-7-5 Brad McKenzie, DC. Treating doctor2-28-05 MRI3-29-5 Bruce Whithead, MD. Occ med5-6-5 Brett Bolte, MD6-28-5 EMG8-1-5 Patrick, Cindrich, MD, neurosurgeon10-19-5 Myelogram/CT10-25-5 Patrick, Cindrich, MD1-25-6 Steven Holtzman, MD, DD4-7-6 Milani4-17-6 Letter of Denial, Liberty Mutual. 4-18-6 Lee Benson, MD4-25-6 Dr. Milani4-226-6 Allied Multicare Center5-16-6 Letter of Denial, Liberty Mutual6-20-6 Milani.

CLINICAL HISTORY

- **DOI**
- **2-7-5 Brad McKenzie, DC. Treating doctor.** Protests the DD by Holtzman. Pt should not have been sent to him, had already been to a DD. Holtzman dx as lbp when she had an abn disc herniation and an emg that was abn. Previous dd dx this pt with hnd. H didn't review several important docs. Recs H's IR be set aside and pt RT Dr Bolte.
- **2-28-05 MRI very small central disc herniation 51.** Facets 45 and 51.
- 3-29-5 Bruce Whithead, MD. Occ med. Tx DC/. PE: dtrs/dec rom/dtrs/ehl/sens dec s L F/circ/NO WADDELL/. Imaging: XR and MRI small central hnp 51, facets 4-1. DX: lumbosacral sprain. DD 51 no nr. **Facets [NOTE THAT HE USES DIFFERENT TERMINOLOGY IN DX OF THE DISC THAN EARLIER IN REPORT, "DD" vs "herniated disc"]** For strain, 12 wks of tx, no further diagnostic testing, no surgery, no injections, no Rx meds, only otc's, Rec rtwfd immediately. MMI. 5% IR.
- **5-6-5 Brett Bolte, MD.** PMandR. DX back sprain/strain. SIJ sprain. DDD, obesity. Thinks imaging is irrelevant. Recs otc's, poss Rx nsaid's, sij inj, sic wks of additional PT, wt loss.
- **6-28-5 EMG.** Denervation edb can be local trauma or suble evidence of L5, S1 nerve irritation. Did have mild inc in para insertional activity.
- **8-1-5 Patrick, Cindrich, MD, neurosurgeon. Initial ov.** LBP , bil leg radiating pain. N pLegs. No wekness. PE: slr bil lbp/g/mmt/dtrs/dec sens L. Imaging desiccation 51, central bulge, nr's contacted L>R. Rec ESIs. Poss disco 51 with control. [no record of failed Tx otherwise reasonable].
- **10-19-5 Myelogram/CT.** F/E no instab, but epidural disc imp worse with ext. CT no abn at any level ex 51: mild diffuse annular bulge, no st.
- **10-25-5 Patrick, Cindrich, MD, neurosurgeon.** M/CT confirmed 51 to be the abnormal level. Suspects an element of instab. Rec 51 fusion. Disco unable to be performed.
- **1-25-6 Steven Holtzman, MD, DD.** EMG basically normal [NOT CORRECT], No records for review: M/CT, Dr. Cendrich, . PE: WADDELL x 4 / slr + bil supine, neg seated/ mmt/sens/. DX: EMG, M/CT, MRI and disco fail to demonstrate any significant pathology [**OVERSTATES LACK OF FINDINGS, NOT CONSISTANT WITH REPORTS**]. MMI DRE II
- **2-21-6 Dr. Milani, initial OV.** OTJ 1-12-5 loading packages ILBP, no RTW since 1-21-5. 8/10 lbp, T's. Leg N. TX: ESI 1, PT Feb to July 05, lbp worse. Dr. Cindrich, neurosurg rec'd fusion. M/CT annulree bulge 51 no NR. Unsuccessful disco due to technical considerations (leg pain with needle passage). EMG 6-28-5 minimally abn with some evidence of 51 nr irritation. MRI 2-28-5 small prot 51, no nr. Mild desiccation. PE ant/h/t/dec rom/slr lbp and prox leg/ dtrs/ pp dec L R esp medial. Dx likely discogenic. Only abn is L5S1. Discussion: failed nonsurg and worse. Rec fusion vs tdr.
- **3-28-6 Milani.** Notes that a neurosurgeon, Dr. Patrick Cindrich rec'd a fusion L5-S1.

- **4-7-6 Milani.** Artificial disc replacement denied for the 2nd time > will request fusion.
- **4-17-6 Letter of Denial, Liberty Mutual.** Denied byased on criteria taken from Lumbar Athrodesis for the treatment of Back Pain: Hanley EN, JBJS 81:716-730, 1999. Pt has very minimal findings on the imaging studies. It is critical that a pt who has minimal essentially benign changes on the imging studies not undergo a fusion. This claimant has complaints that are not supported with objective clinical findings.
- **4-18-6 Lee Benson, MD.** PSH otj lbp 2004. RTWLD. PE lb spasm/+slr/motor/sens/. DX IVD back/radic/spasm. Rec ultram, norco, soma, and PT.
- **4-25-6 Dr. Milani.** Response to denial. The only abnormality is at L5S1. All other levels are normal.
- **4-226-6 Allied Multicare Center,** behavioral medicine consult. Severe depression, mod anxiety,myriad of s/s. S/s are secondary to OTJ. Rec psychological and medication Rx.
- **5-16-6 Letter of Denial, Liberty Mutual.** Denied based on OKU Spine. The MRI findings of minimal disc bulge at L5S1 and the EMG/NCV study demonstrated subtle nerve root irritation. There is no documentation of instability on any of the studies.
- **6-20-6 Milani.** Denial. MDR should be filed. In meantime recd PMP.

DISPUTED SERVICE(S)

Under dispute is the prospective, and/or concurrent medical necessity of Arthtodesis, posterior or posterolateral technique, single level; lumbar L5-S1.

DETERMINATION/DECISION

The Reviewer disagrees with the determination of the insurance company.

RATIONALE/BASIS FOR THE DECISION

The URA reviewers cite the following in their denial: 1.Criteria from Arthrodesis for the Treatment of Back Pain, JBJS 1999, 2. Minimal findings on imaging studies, 3. Lack of objective clinical findings, 4. failure to satisfy OKU Spine (AAOS) criteria, 5. EMG findings were subtle, and 6. No documented instability.

The Reviewer's medical assessment is the following:

1. The URA reviewer sites criteria from Arthrodesis for the Treatment of Back Pain, JBJS 1999 but, this study is notably dated, 1999. The NASS Phase III Clinical Guidelines for Multidisciplinary Guidelines for Multidisciplinary Spine Care Specialists, a more recent guideline, addresses criteria including 6 months of nonsurgical care, the presence of instability or degenerative disc disease. It also mentions consideration of a discogram. The ACOEM Guidelines, 2nd Edition oddly state, "While not recommended, patient selection criteria if fusion is to be performed anyway: chronic low back pain > 3 months, mechanical back pain with internal disc disruption one level; pain generators identified and treated; completion of nonsurgical care;

Cray, MRI, CT demonstrating disc pathology; spine pathology limited to two levels; psychological screen with confounding issues addressed.

When we apply the NASS Phase III guidelines, we note this Patient had greater than 6 months of nonsurgical care, “degenerative disc” changes (actually had a disc herniation), consideration of a discogram, mechanical back pain with internal disc disruption, pain generators identified and treated, completion of nonsurgical care, imaging demonstrating disc pathology, and pathology limited to one level.

2. Minimal findings on imaging studies: there is no literature that defines “minimal findings”. A better way for the URA reviewers to address this is failure of imaging to correlate with the Patient’s symptoms.

3. Lack of objective clinical findings: if by clinical findings, they mean physical exam findings, then no patient with mechanical back pain will have no objective findings. If one uses current DWC definition of objective findings as a criteria for operating for radiculopathy, then the Reviewer would counter that only 52% of Patients with radiculopathy fulfill these criteria. In other words, DWC criteria miss 48% of patients with radiculopathy (unpublished research). This Patient does have objective findings on MRI, myelogram/CT, and EMG.

4. Failure to satisfy OKU Spine (AAOS) criteria: see # 1 above.

5. EMG findings were subtle: see # 2 above.

6. No documented instability. The Reviewer agrees, but neither NASS nor ACOEM list lack of instability as an exclusion criterion.

Overall, the URA reviewers failed to make their case and do not take into consideration current screening criteria; they also fail to relate actual clinical evidence to the most current screening criteria (see # 1 above).

Screening Criteria

1. Specific:

- NASS Phase III Clinical Guidelines for Multidisciplinary Guidelines for Multidisciplinary Spine Care Specialists
- ACOEM Guidelines, 2nd Edition

2. General:

In making his determination, the Reviewer had reviewed medically acceptable screening criteria relevant to the case, which may include but is not limited to any of the following: Evidence Based Medicine Guidelines (Helsinki, Finland); Texas Medical Foundation: Screening Criteria Manual (Austin, Texas); Texas Chiropractic Association: Texas Guidelines to Quality Assurance (Austin Texas); Texas Medical Foundation: Screening Criteria Manual (Austin, Texas); Mercy Center Guidelines of Quality Assurance; any and all guidelines issued by DWC or other State of Texas Agencies; standards contained in Medicare Coverage Database; ACOEM Guidelines; peer-reviewed literate and scientific studies that meet nationally recognized standards; standard references compendia; and findings; studies conducted under the auspices of federal government agencies and research institutes; the findings of any national board recognized by the National Institutes of Health; peer reviewed abstracts submitted for presentation at major medical associates meetings; any other recognized authorities and systems of evaluation that are relevant.

CERTIFICATION BY OFFICER

IRO America has performed an independent review solely to determine the medical necessity of the health services that are the subject of the review. IRO America has made no determinations regarding benefits available under the injured employee’s policy.

As an officer of IRO America Inc., I certify that there is no known conflict between the Reviewer, IRO America and/or any officer/employee of the IRO with any person or entity that is a party to the dispute.

IRO America is forwarding by mail or facsimile, a copy of this finding to the DWC, the Injured Employee, the Respondent, the Requestor, and the Treating Doctor.

Sincerely,
IRO America Inc.

Dr. Roger Glenn Brown
President & Chief Resolutions Officer

Cc: Allied Multicare Centers Liberty Mutual Ins.
Attn: Melissa Sumerour Attn: Carolyn Guard
Fax: 254-751-1655 Fax: 574-258-5349

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.

The party appealing this decision shall deliver a copy of its written request for a hearing to other party involved in this dispute.

I hereby certify, in accordance with DWC Rule 102.4 (h), that a copy of this Independent Review Organization decision was sent to the carrier, requestor, claimant (and/or the claimant’s representative) and the DWC via facsimile, U.S. Postal Service or both on this 2nd day of August, 2006.

Name and Signature of IRO America Representative:

Sincerely,
IRO America Inc.

Dr. Roger Glenn Brown
President & Chief Resolutions Officer