

# RYCO MedReview

## DETERMINATION OF INDEPENDENT REVIEW

**NAME OF PATIENT:** \_\_\_\_\_  
**IRO CASE NUMBER:** M2-07-0299-01  
**NAME OF REQUESTOR:** \_\_\_\_\_  
**NAME OF PROVIDER:** George W. Wharton, M.D.  
**REVIEWED BY:** Board Certified in Orthopedic Surgery  
**IRO CERTIFICATION NO:** IRO 5345  
**DATE OF REPORT:** 12/14/06

Dear Ms. \_\_\_\_:

RYCO MedReview has been certified by the Texas Department of Insurance (TDI) as an independent review organization (IRO) (#IRO5345). 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 RYCO MedReview for an independent review. The reviewing physician selected has performed an independent review 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 health care professional or physician reviewer who is Board Certified in Orthopedic Surgery and is currently listed on the DWC Approved Doctor List.

I am the Secretary and General Counsel of RYCO MedReview 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 any of the

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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 lumbar spine interpreted by Brian Chowhurst, D.O. dated 07/19/01  
Evaluations with Stephen L. Hall, D.O. dated 08/09/01, 08/12/01, 09/13/01, 10/18/01, 12/13/01, 12/25/01, 03/15/02, 04/17/02, 07/04/02, 09/04/02, 10/07/02, 10/30/02, 11/11/02, 11/22/02, 01/06/03, 02/13/03, 03/07/03, 04/10/03, 11/01/04, 11/22/04, 12/13/04, and 02/07/05  
An EMG/NCV study interpreted by Gary D. Gottfried, M.D. dated 10/10/01  
An operative report with Ashley Classen, D.O. dated 11/20/01  
Procedure notes from Dr. Classen dated 05/23/02 and 06/27/02  
A CT scan of the lumbar spine interpreted by Linda Judge, M.D. dated 06/27/02  
An MRI of the lumbar spine interpreted by Bart Mobley, D.O. dated 10/02/02  
An addendum from Paul T. Marsh, D.O. dated 10/15/02  
A Required Medical Evaluation (RME) with Robert G. Ranelle, D.O. dated 11/24/02  
An MRI of the lumbar spine interpreted by J. R. Lancaster, D.O. dated 09/28/04  
A lumbar myelogram and CT scan interpreted by John K. Campbell, M.D. dated 11/08/04  
Evaluations with George W. Wharton, M.D. dated 03/08/05, 07/26/05, 08/23/05, 10/11/05, 12/06/05, 05/02/06, 06/27/06, 07/25/06, 08/22/06, 09/12/06, and 11/21/06  
Required Medical Evaluations (RMEs) with Donald M. Mauldin, M.D. dated 06/28/05 and 05/23/06  
Evaluations with Aaron T. Lloyd, M.D. dated 10/21/05, 02/23/06 and 04/19/06  
An evaluation with Gwen Clark, R.N. dated 12/02/05  
An operative report from Dr. Lloyd dated 03/24/06  
A lumbar discogram interpreted by Jim Fernandez, M.D. dated 06/15/06  
A post discogram CT scan interpreted by Nicholas G. Iwasko, M.D. dated 06/15/06  
An evaluation with Gary Barnes, A.P.R.N., B.C. dated 08/02/06  
Letters of adverse determination from UniMed Direct, L.L.C. dated 08/18/06 and 08/30/06  
An evaluation with Michele Steffek, P.A.-C. dated 10/16/06

#### **Clinical History Summarized:**

An MRI of the lumbar spine interpreted by Brian Chowhurst, D.O. dated 07/19/01  
Evaluations with Stephen L. Hall, D.O. dated 08/09/01, 08/12/01, 09/13/01, 10/18/01, 12/13/01, 12/25/01, 03/15/02, 04/17/02, 07/04/02, 09/04/02, 10/07/02, 10/30/02, 11/11/02, 11/22/02,

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01/06/03, 02/13/03, 03/07/03, 04/10/03, 11/01/04, 11/22/04, 12/13/04, and 02/07/05  
An EMG/NCV study interpreted by Gary D. Gottfried, M.D. dated 10/10/01  
An operative report with Ashley Classen, D.O. dated 11/20/01  
Procedure notes from Dr. Classen dated 05/23/02 and 06/27/02  
A CT scan of the lumbar spine interpreted by Linda Judge, M.D. dated 06/27/02  
An MRI of the lumbar spine interpreted by Bart Mobley, D.O. dated 10/02/02  
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Evaluations with George W. Wharton, M.D. dated 03/08/05, 07/26/05, 08/23/05, 10/11/05, 12/06/05, 05/02/06, 06/27/06, 07/25/06, 08/22/06, 09/12/06, and 11/21/06  
Required Medical Evaluations (RMEs) with Donald M. Mauldin, M.D. dated 06/28/05, 05/23/06  
Evaluations with Aaron T. Lloyd, M.D. dated 10/21/05, 02/23/06, and 04/19/06  
An evaluation with Gwen Clark, R.N. dated 12/02/05  
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Letters of adverse determination from UniMed Direct, L.L.C. dated 08/18/06 and 08/30/06  
An evaluation with Michele Steffek, P.A.-C. dated 10/16/06

**Clinical History Summarized:**

An MRI of the lumbar spine interpreted by Dr. Chowhurst on 07/19/01 revealed decreased disc space at T11-T12 and a diffuse disc bulge at L5-S1. An EMG/NCV study interpreted by Dr. Gottfried on 10/10/01 was normal. An ESI was performed by Dr. Classen on 11/20/01. Medial branch blocks were performed by Dr. Classen on 05/23/02. A lumbar discogram performed with Dr. Classen on 06/27/02 revealed concordant/positive findings at L2 through L5. A post discogram CT scan interpreted by Dr. Judge on 06/27/02 revealed a tear at L5-S1 and contrast extension to L2 through L4. A lumbar MRI interpreted by Dr. Mobley on 10/02/02 revealed a mild degenerative change at T11-T12. On 11/11/02, Dr. Hall recommended placing the patient at Maximum Medical Improvement (MMI) and giving her permanent restrictions. On 11/24/02, Dr. Ranelle felt the patient was at MMI and would not require surgery. An MRI of the lumbar spine interpreted by Dr. Lancaster on 09/28/04 revealed a herniated disc at L5-S1. A lumbar

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discogram CT scan interpreted by Dr. Campbell on 11/08/04 revealed mild disc bulging at L5-S1 and L4-L5. On 11/22/04 and 02/07/05, Dr. Hall recommended a spine surgeon evaluation. On 03/08/05, Dr. Wharton recommended a lumbar discogram and eventual surgery. On 06/28/05, Dr. Mauldin recommended possible surgery and sedentary work duty. On 07/26/05, Dr. Wharton prescribed Celebrex, Darvocet, and Ambien. Dr. Wharton recommended a lumbar discogram CT scan on 08/23/05. On 10/11/05, Dr. Wharton recommended ESIs and Mobic. On 10/21/05, Dr. Lloyd recommended a lumbar ESI. Ms. Clark also recommended an ESI on 12/02/05. On 02/23/06, Dr. Lloyd recommended surgery. Dr. Lloyd performed a right L5-S1 selective nerve root block on 03/24/06. On 04/19/06, Dr. Lloyd again recommended surgery and Lyrica. On 05/02/06, Dr. Wharton recommended a lumbar discogram CT scan. A lumbar discogram interpreted by Dr. Fernandez on 06/15/06 revealed some discomfort at L4-L5 and L5-S1 and an annular tear at L5-S1. The discogram CT scan interpreted by Dr. Iwasko on 06/15/06 revealed a minimal disc bulge at L4-L5 and fissuring at L3-L4 and L5-S1 with a possible annular tear at L5-S1. On 06/27/06 and 07/25/06, Dr. Wharton again recommended surgery. UniMed Direct wrote letters of adverse determination regarding the surgery on 08/18/06 and 08/30/06. On 09/12/06, Dr. Wharton advised an appeal to the adverse determination. On 10/16/06, Ms. Steffek prescribed Hydrocodone, Ambien, Lyrica, Flexeril, and a muscle relaxer.

**Disputed Services:**

Decompression and transforaminal lumbar interbody fusion at L5-S1 with interbody cage, BMP, and pedicle screws with a two day length of stay

**Decision:**

I disagree with the requestor. The decompression and transforaminal lumbar interbody fusion at L5-S1 with interbody cage, BMP, and pedicle screws with a two day length of stay would be neither reasonable nor necessary.

**Rationale/Basis for Decision:**

In my opinion, the decompression and transforaminal lumbar fusion at L5-S1 is not indicated. In my opinion, this is not indicated on many levels. First is the simple matter of symptom stability. This patient seems to have symptoms mostly of low back pain with some possible questionable radiculopathy. Some examiners feel there is radiculopathy. Some examiners do not. Some examiners believe the level of radiculopathy is L5-S1. Some believe it is more L3-L4. In addition, I would like to point out that in a note dated 10/16/06 by Michelle Steffek, P.A.-C., she

noted “the patient’s pain scale is 4/10 on the visual analog pain scale overall. Overall, her pain is very well controlled”. This does not sound like somebody requiring fusion for discogenic back pain based on systems alone.

Assuming symptomatology was consistent over time and among examiners, and the patient had severe enough pain, I still do not believe the patient meets the criteria for lumbar fusion based on a couple of facts. One of the reasons brought forward as a possible need for fusion was the fact that the patient had a concordant discogram. In fact, according to the discogram on 06/15/06, the patient had positive changes at L4-S1, but the pain was not necessarily concordant. According to ACOEM Guidelines and many guidelines for lumbar fusion in the literature, a discogram as a means for predicting the need for lumbar fusion has fallen into this favor. There is little evidence that a discogram is a good predictor on who would do well with lumbar interbody fusion. The requesting physician, Dr. Wharton, also puts forward that the patient may need further surgery for discogenic back pain this itself would be highly challenged in a number of levels as to whether lumbar interbody fusion for purely discogenic back pain is a reasonable form of treatment. This notion continues to be brought up in many forms in orthopedic guideline and journal updates to instructional lectures of American Academy of Orthopedic Surgeons, and other foundation meetings. Thus, in summary, it is my opinion that this patient is a poor candidate for lumbar interbody fusion on a number of levels. First of all, in the objective area, with regard to symptomatology, I do not believe he is a candidate and secondly (and just as important), this patient medically is not a good candidate for this.

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 RYCO MedReview 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.

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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. 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 12/14/06 from the office of RYCO MedReview.

Sincerely,

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Laura White  
Secretary/General Counsel