



Medical Review Institute of America, Inc.

America's External Review Network

January 10, 2007

GLORIA COVARRUBIAS  
TX DEPT OF INS DIV OF WC  
AUSTIN, TX 78744-1609

CLAIMANT: \_\_\_  
EMPLOYEE: \_\_\_  
POLICY: M2-07-0554-01  
CLIENT TRACKING NUMBER:

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Medical Review Institute of America (MRIOA) has been certified by the Texas Department of Insurance as an Independent Review Organization (IRO). The Texas Department of Insurance Division of Workers Compensation has assigned the above-mentioned case to MRIOA for independent review in accordance with DWC Rule 133 which provides for medical dispute resolution by an IRO.

MRIOA 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. Itemization of this information will follow.

The independent review was performed by a peer of the treating provider for this patient. The reviewer in this case is on the DWC approved doctor list (ADL). The reviewing provider has no known conflicts of interest existing between that provider 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 before referral to the IRO.

**Records Received:**

12/18/2006 records received from the state of Texas:

- Notification of IRO assignment
- Texas Department of Insurance 12/18/2006 Medical dispute resolution request
- Table of disputed services
- Request for Independent review organization

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- Travelers indemnity Co. denial by physician adviser. This advises that the anterior lumbar fusion procedure has been denied.
- 11/2/2006 letter from Travelers indemnity insurance company
- 9/15/2006 medical consultants network report with a diagnosis of lumbar strain superimposed on lumbar degenerative disc L5/S1. Radiographs were not performed or reviewed.

12/22/2006 records received from the Phoenix insurance company:

- 12/12/2006 denial from St. Paul Traveler's companies
- 9/15/2006 medical consultants network report
- Benefit dispute agreement 10/11/2006
- Notification of Department of workers compensation DWC60
- Medical dispute resolution request 12/8/2006
- Table of disputed services
- 11/2/2006 letter from Travelers insurance Co. with a reconsideration of the request again denying the request at L5/S1 surgery
- 10/18/2006 letter from Travelers insurance Co.

1/8/2007 records received from Dr. Pechero:

- Texas Department of Insurance request for production of documents
- 12/6/2005 progress report
- 10/20/2005 MRI scan lumbar spine report. This identifies disc bulge at L5/S1, dehydration and severe loss of height. At L4/5 there is a central disc bulge with small focus of high-intensity zone. At the other discs there is no significant abnormality described.
- 11/1/2005 evaluation report treatment with the grace and medication
- 1/3/2006 follow-up report
- 4/25/2006 follow-up report. Mostly back pain complaints with a little decreased sensation at L5 reported diskogram has been ordered.
- 6/28/2006 progress report. Diskogram results reviewed. EMG studies reported as the CT diskogram reports are noted to be "contradicting and inconclusive findings".
- 7/19/2006 progress report. This reviews the flexion extension x-rays ordered before and identifies "flexion/extension x-rays revealed instability at the L5-S1 level". It does not mention anything about the L4/L5 level
- 10/6/2006 progress report with a request for anterior lumbar fusion L5/S1
- 12/1/2006 progress report
- 12/29/2006 progress report
- 10/27/2006 radiographs lumbar spine flexion extension studies clearly identify instability at L4/L5 and L5/S1 levels.
- 7/6/2006 electrodiagnostic the report showing the EMG identified mild left as one

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radiculopathy, nerve conduction studies were normal.

- 7/6/2006 report from neurologist Mireles
- 6/14/2006 lumbar discography report
- 6/14/2006 lumbar CT scan report
- Texas workers compensation work status reports 12/29/2006, 12/1/2006, 10/6/2006, 9/8/2006, 7/19/2006, 6/30/2006, 4/25/2006, 1/3/2006, 12/6/2005, 11/1/2005.

### **Summary of Treatment/Case History:**

The date of injury is \_\_\_\_\_. This is a 58-year-old patient with multiple levels of lumbar spondylosis. After falling at work he developed lower back pain and leg pain bilaterally. The patient has no neurological deficit. Physical therapy treatments have been provided on two separate occasions. A previous review has denied the request for fusion considering that there was no indication with a diagnosis of degenerative lumbar spondylosis. The patient has eventually been released to some limited duties.

He had an EMG study which showed left S1 radiculopathy. He had a lumbar diskogram which was indeterminate at L5/S1, equivocal at L4/5 and positive at L2/L3 with the normal control at L1/2. There was a left sided disc protrusion at L5-S1 with disc bulging at L4 L5. There was no disc rupture. Flexion extension radiographs have shown instability at L4/5 and L5/1.

The independent medical consultants report 9/15/2006 identified normal pain behavior findings including compression test rotation test and symptom magnification.

### **Questions for Review:**

1. Please advise if the preauthorization request for anterior lumbar interbody fusion with cages L5/S1 with a three-day hospital stay as medically necessary?

### **Explanation of Findings:**

The patient has a history of a fall at work, has chronic lower back pain with some identified leg pain, which is not his major problem. His investigations initially did not include plain radiographic studies but concentrated on discography, EMG. He was treated non-surgically with medications, physical therapy has been reported, and he has been excused from work. After the discography showed L5-S1 left sided disc protrusion and the electrodiagnostic studies identified a left-sided mild S1 radiculopathy, surgical anterior lumbar fusion was requested for the level L5-S1. This was denied and it was noted that there was no radiographic evaluation.

The patient had flexion extension radiographs at this time. These radiographs clearly identify instability at not only the L5-S1 level, but also the L4-L5 level. Despite these findings the patient is still being considered for anterior lumbar L5/S1 fusion.

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It is also of concern that the patient has been reported to show pain behavior with nonorganic physical testing positive results.

Considering the following factors, the requested surgery is not appropriate:

1. The patient has positive nonorganic pain behavior described in the physical examination from the independent medical exam report.
2. The patient's complaints are predominantly axial pain, but there are no clear localized neurological findings to clinical exam.
3. There is no psychological evaluation and clearance.
4. The patient has had provision of limited duties and is evidently working at modified duties.
5. The diskogram was not reported to show positive conclusive findings at the levels where surgery is being considered.
6. The electrodiagnostic testing is only mildly positive on the left side at one level L5/S1.
7. The surgery being proposed does not clearly address any suspected nerve compression.
8. The flexion/extension radiographs clearly show abnormal motion and instability at L4/5 and L5/S1, but the proposed surgery poorly addresses only the instability at L5-S1.

**Conclusion/Decision to Not Certify:**

1. Please advise if the preauthorization request for anterior lumbar interbody fusion with cages L5/S1 with a three-day hospital stay as medically necessary?

The request for anterior lumbar interbody fusion with cages L5/S1 with a three-day hospital stay is not medically necessary or appropriate.

**Applicable Clinical or Scientific Criteria or Guidelines Applied in Arriving at Decision:**

The validity of spinal fusion for lumbar instability should be considered. Some difficulty lies in the interpretation of the term instability. The interpretations in the clinical, radiologic, and biomechanical contexts are different. These interpretations may only be reconciled if the confusion between hypermobility and instability is removed and some recourse is made to soft tissue integrity. Fusion is considered in the context of the functioning spine as a whole. Although the aim of the surgery is usually to produce a solid arthrodesis, some studies show that this can compromise the functioning of the rest of the spine. Furthermore, there is some evidence that pseudarthrosis itself may not be detrimental. Dynamic imaging offers the potential for improved diagnosis and assessment, but further work is needed to pave the way for better selection criteria and treatment strategies.

Before referral for surgery, clinicians should consider referral for psychological screening to improve surgical outcomes, possibly including standard tests such as the second edition of the Minnesota

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Multiphasic Personality Inventory (MMPI 2). In addition, clinicians may look for and document Waddell signs during the physical exam.

Surgery is relatively contraindicated in the presence of –

1. Multiple level degenerative disease of the lumbar spine
2. Greater than 12 months of disability (time-loss compensation benefits) prior to consideration of fusion
3. Psychosocial factors that are correlated with poor outcome, such as:
  - a. High degrees of somatization on clinical or psychological evaluation
  - b. Presence of a personality disorder or major psychiatric illness
  - c. Current evidence of factitious disorder

Surgery benefits fewer than 40% of patients with questionable physiologic findings. Moreover, surgery increases the need for future surgical procedures with higher complication rates.

Prior to lumbar fusion, clinical psychological or psychiatric assessment should be performed on all patients who meet the lumbar fusion criteria and who have been receiving time-loss compensation benefits. This assessment is intended to help the requesting surgeon identify specific psychological risk factors for chronic disability that may be barriers to recovery following lumbar fusion.

All intraoperative determinations of instability that lead to fusion must be clearly documented at the time, and subsequently discussed with a peer surgeon.

Although adding to the clinical database, provocative discography, diagnostic facet joint injections, and pain relief during the use of a rigid spinal brace are not definitive indications for fusion.

Anterior Lumbar Interbody Fusion (ALIF), if indicated, should be done only in conjunction with a posterior stabilization procedure.

Given the above, the lack of documentation, and the low back pain, this patient is not a surgical candidate for consideration of an anterior L5/S1 isolated lumbar fusion as requested.

#### **References Used in Support of Decision:**

1. Milliman – In patient and surgical care, ninth edition. Lumbar fusion Indications for surgery.
2. Subach BR, et al. Do current outcomes data support the technique of lumbar interbody fusion? *Clinical Neurosurgery* 2001;48: 204–18.
3. ACOEM guidelines Chapter 12 –page 300

4. Washington State Department of Labor and Industries. Guidelines for lumbar fusion (arthrodesis). Olympia (WA): Washington State Department of Labor and Industries; 2002 Aug. 5 p
  5. Spinal fusion for lumbar instability: does it have a scientific basis? Muggleton, Jen M., Kondracki, Michael and Allen, Robert (2000) Journal of Spinal Disorders & Techniques, 13, (3), 200-204.
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The physician providing this review is board certified in Orthopaedic Surgery. The reviewer has held academic appointments as Assistant Instructor at a state university, Assistant Professor of Orthopaedics, Assistant Professor of Neurosurgery and Director of an orthopaedic hospital spine center. The reviewer has been extensively published and has given numerous presentations and organized seminars in his field of expertise. The reviewer has been in active private practice since 1983.

#### 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.

Chief Clerk of Proceedings /  
Appeals Clerk  
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

In accordance with Division 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 10 day of Jan/2007.

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Valerie Ottman

MRIOA is forwarding this decision by mail, and in the case of time sensitive matters by facsimile, a copy of this finding to the treating provider, payor and/or URA, and the DWC.

It is the policy of Medical Review Institute of America to keep the names of its reviewing physicians confidential. Accordingly, the identity of the reviewing physician will only be released as required by state or federal regulations. If release of the review to a third party, including an insured and/or provider, is necessary, all applicable state and federal regulations must be followed.

Medical Review Institute of America retains qualified independent physician reviewers and clinical advisors who perform peer case reviews as requested by MRIOA clients. These physician reviewers and clinical advisors are independent contractors who are credentialed in accordance with their particular specialties, the standards of the American Accreditation Health Care Commission (URAC), and/or other state and federal regulatory requirements.

The written opinions provided by MRIOA represent the opinions of the physician reviewers and clinical advisors who reviewed the case. These case review opinions are provided in good faith, based on the medical records and information submitted to MRIOA for review, the published scientific medical literature, and other relevant information such as that available through federal agencies, institutes and professional associations. Medical Review Institute of America assumes no liability for the opinions of its contracted physicians and/or clinician advisors. The health plan, organization or other party authorizing this case review agrees to hold MRIOA harmless for any and all claims which may arise as a result of this case review. The health plan, organization or other third party requesting or authorizing this review is responsible for policy interpretation and for the final determination made regarding coverage and/or eligibility for this case.

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Case Analyst: Valerie O ext 554

cc: Requestor  
Respondent

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