

STATE OFFICE OF ADMINISTRATIVE HEARINGS
300 West 15th Street, Ste. 502
Austin, TX 78701

SOAH DOCKET NO. 453-02-3799.M4
[MDR TRACKING NO. M4-02-2670-01]

HIGHPOINT PAIN MANAGEMENT,
Petitioner

V.

TEXAS WORKERS' COMPENSATION
COMMISSION AND ARLINGTON
INDEPENDENT SCHOOL DISTRICT
C/O LIBERTY MUTUAL INSURANCE
CO.,
Respondent

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BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

DECISION AND ORDER

I. Introduction

Highpoint Pain Management¹(Provider) has appealed an order of the Texas Workers' Compensation Commission (TWCC) Medical Review Division (MRD) regarding medical services for ___(Claimant). The MRD denied the Provider's request for additional reimbursement of \$775 for services that it provided to the Claimant. The only disputed issues are:

- whether the \$88 that Liberty Mutual Insurance Co. (Carrier) reimbursed the Provider for the fluroscopic guidance with epidurography used to guide an epidural steroid injection (ESI) into the Claimant's spine was fair and reasonable compensation for that service;
- whether the Provider is entitled to separate and additional compensation for gloves and a five cubic centimeter (cc) syringe used to give the Claimant the

¹Alternately referred to in some exhibits and pleadings as Highpoint Pain Clinic.

- ESI beyond the compensation Carrier paid it for a surgical tray; and whether the Provider is entitled to separate and additional compensation for the sodium chloride injection that was provided to the Claimant through the same puncture site through which he was given 80 mg of Depo-Medrol during the ESI.

The parties agree that the Provider, since it disputes the MRD's decision, has the burden of proof

As set out below, the Administrative Law Judge (ALJ) finds that the Provider is not entitled and denies the Provider's request for that additional compensation for the above services.

II. Fluoroscopic Guidance

The Carrier reimbursed the Provider \$88 for the fluoroscopic guidance that it furnished to assist the Claimant's doctor in providing the ESI to the Claimant. The Provider maintains that the fair and reasonable compensation for fluoroscopic guidance² it provided is \$350. The Carrier argues that fluoroscopic guidance is simply another type of fluoroscopy. The Carrier responds that the Commission in its Medical Fee Guideline (MFG) has set the maximum allowable reimbursement (MAR) for fluoroscopy, with certain exceptions not relevant in this case (*e.g.* cardiac fluoroscopy), under CPT code 76000 as \$88.³ The Provider responds that the fluoroscopic guidance it furnished was unique. Indeed, it billed for the service as unlisted diagnostic radiologic procedure, CPT code 76499, with explanatory modifiers.

²Some Provider exhibits also refer to this as fluoroscopic control.

³Medical Fee Guideline 1996; adopted by reference at 28 TAC § 134.201(a).

In a prior case involving this same Provider and Carrier, though a different claimant and employer, another Administrative Law Judge (ALJ) found that fluroscopic guidance is included within the Commission's MFG MAR for fluoroscopy.⁴ In this case, this ALJ concludes the same.

The Parties point to and the ALJ can find no definition of "fluoroscopy" in the Labor Code or the Commission's rules. The ALJ takes official notice of the following definition:

Fluoroscopy is a technique for obtaining "live" X-ray images of a living patient. The Radiologist uses a switch to control an X-Ray beam that is transmitted through the patient. The X-rays then strike a fluorescent plate that is coupled to an "image intensifier" that is (in turn) coupled to a television camera. The Radiologist can then watch the images "live" on a TV monitor.⁵

The evidence includes manufacturer's literature for the Provider's equipment that supports this definition.⁶

⁴SOAH Docket No. 453-02-1088.M4 (Apr. 22, 2002, ALJ Smith)

⁵Uniformed Services University of the Health Sciences, Department of Radiology and Radiological Sciences, <<http://rad.usuhs.mil/rad/home/flouro.html>> (Aug. 11, 2002).

⁶ALJ Ex. 1, pp. 72 *et seq.*

The record also does not contain a definition of “fluoroscopic guidance.” The Provider argues that the AMA has adopted CPT code 76005, of which the ALJ also takes official notice, that, while not completely defining, at least partially explains what “fluoroscopic guidance” is:

Fluoroscopic guidance and localization of needle . . . for spine or paraspinous diagnostic or therapeutic injection procedures . . . epidural . . .”⁷

The Provider complains that the Commission has failed to adopt this CPT code and a MAR for it. The Provider also notes that the Commission is obligated to review and revise its guidelines, which, would include the MFG, every two years to reflect fair and reasonable rates.⁸ For that reason, the Provider introduced evidence attempting to prove that the fair and reasonable compensation for the “fluoroscopic guidance” it provided is higher than the \$88 MAR for most fluoroscopy. The ALJ disagrees for several reasons.

The ALJ finds that fluoroscopic guidance is a type of fluoroscopy, albeit for the specific purpose of localizing a needle for an ESI or similar procedures. He can draw no other conclusion, since “fluoroscopic” is simply the adjective form of the word “fluoroscopy.” The Commission’s CPT code 76000 is defined in the MFG as:

Fluoroscopy (separate procedure), up to one hour physician time, other than 71023 or 71034 (e.g., cardiac fluoroscopy).

⁷American Medical Association, <<https://webstore.ama-assn.org/search>>.

⁸Labor Code § 413.012.

The MFG also sets an \$88 MAR CPT code 76000 and also provides that an “insurance carrier will reimburse the lesser of the billed charge, or the MAR.”⁹ Since “fluoroscopic guidance” is a type of fluoroscopy and the MFG does not set a separate MAR for “fluoroscopic guidance,” the ALJ concludes that the MAR for “fluoroscopic guidance” is \$88. Since that MAR applies, further inquiry as to the fair and reasonable rate of reimbursement for “fluoroscopic guidance” is not necessary.

Moreover, nothing in that statute that requires the Commission to review its guidelines every two years invalidates the current guidelines if the Commission fails to review them. The ALJ concludes that the Carrier has fully compensated the Provider by paying \$88 for the fluoroscopic guidance and that the Provider’s request for additional compensation for that procedure should be denied.

III. Epidurogram

The Provider also argues that it is entitled to additional reimbursement of \$300 for the epidurogram it provided. The Carrier responds that the epidurogram was global to the fluoroscopy.

The evidence is not completely clear, but it suggests,¹⁰ and the Parties seemed to agree at the hearing that an epidurogram is hard copy photo taken through fluoroscopy that shows the spread of the steroid delivered by an ESI. The ALJ so concludes.

⁹MFG, General Instructions, VI. Reimbursement.

¹⁰ALJ Ex. 1, pp. 27, 58, and 187.

In a formal advisory, the Commission's former Executive Director, Todd K. Brown, stated his opinion that a video tape of a fluoroscope may be considered an appropriate legal precaution; however, it is very rarely considered a medical necessity.¹¹ The Provider argues that the epidurogram was necessary to see that spread of the steroid. The Claimant's treating physician stated through a letter admitted into evidence that:

An epidurogram is also essential. An epidurogram allows us to see the distribution of medication spread in the epidural space and also insures us that the injection was placed in the epidural space and not in some other location. Therefore fluoroscopic guidance and epidurography enhances therapeutic results, decreases complications and enable the procedure to be performed in a much safer fashion.¹²

The doctor who administered the ESI also stated in her notes on the date of the ESI that the epidurogram showed good bilateral spread between L1 and L4.¹³

The ALJ agrees that the epidurogram was necessary, but the question remains: was it part of the fluoroscopy? The former Executive Director's Advisory led MRD to conclude that an epidurogram and similar procedures, like a video tape of a fluoroscopy, are part of the fluoroscopy and should not be billed separately. The American Society of Anesthesiologists has similarly stated in a newsletter that generally epidurography and fluoroscopic guidance should not both be billed in

¹¹ALJ Ex. 217. *See also* TWCC Advisory 97-01, <<http://twcc.state.tx.us/news1/advisories/ad9701.html>> (Jun. 13, 1997).

¹²ALJ Ex. 1, p. 133.

¹³ALJ Ex. 1, p. 58.

that epidurography refers to a formal study that would include fluoroscopy and a formal written report.¹⁴

The ALJ concludes that an epidurogram is included within fluoroscopy. The evidence suggests that an epidurogram is intimately tied to the fluoroscopy. The ALJ can not agree that printing a hard copy of what the fluoroscopy allowed the doctor to see “live” on a video screen entitles the Provider to additional reimbursement.

IV. Gloves and Syringe

¹⁴ALJ Ex. 1, p. 219.

The Provider seeks reimbursement of \$15 for surgical gloves (CPT code A4649) and \$10 for a five cc syringe used in giving the ESI to the Claimant. MRD correctly found that under the Commission's Surgery Ground Rules (SGR) a surgical tray, for which the Carrier paid the Provider (CPT code A4550) includes all supplies needed perform the procedure.¹⁵ The ALJ concludes that the Provider is entitled to no additional reimbursement for the gloves or syringe.

V. Sodium Chloride

The Provider also seeks a \$25 reimbursement for an injection of sodium chloride (CPT code J2912) that was provided to the Claimant through the same puncture site through which he was given 80 mg of Depo-Medrol during the ESI and for which the Provider was reimbursed. Once again, the SGR directly addresses this issue, providing, "When introducing additional materials through the same puncture site, reimbursement shall be allowed for the materials only"¹⁶ The ALJ concludes that the Provider is not entitled to be reimbursed for a second injection when an additional material was supplied through the same puncture site.

VI. Summary

The ALJ concludes that all of the Provider's requests for additional reimbursement should be denied.

VII. Findings of Fact

¹⁵SGR V.B.1.

¹⁶SGR I.E.4.d.

1. On _____(Claimant) sustained a work-related injury to his lower back.
2. On the date of injury, the Claimant's employer was _____ and its workers' compensation insurance carrier was Liberty Mutual Insurance Co. (Carrier).
3. On June 6, 2001, the Claimant received an epidural steroid injection (ESI) to treat his pain resulting from his compensable injury.
4. The Provider furnished fluoroscopic guidance to assist the doctor in giving the ESI to the Claimant.
5. Fluoroscopy is a technique for obtaining "live" X-ray images of a living patient. The Radiologist uses a switch to control an X-Ray beam that is transmitted through the patient. The X-rays then strike a fluorescent plate that is coupled to an "image intensifier" that is (in turn) coupled to a television camera. The Radiologist can then watch the images "live" on a TV monitor.
6. Fluoroscopic guidance is a type of fluoroscopy that allows the localization of needle in the Claimant's spine for the ESI.
7. An epidurogram is hard copy photo taken through fluoroscopy that shows the spread of the steroid delivered by the ESI.
8. An epidurogram is intimately tied to and included within fluoroscopy.
9. The Carrier reimbursed the Provider for a surgical tray (CPT code A4550) that it furnished and was needed to give the ESI to the Claimant.

10. The Provider furnished surgical gloves (CPT code A4649) and a five cc syringe (A4209) used in giving the ESI to the Claimant.
11. The Provider furnished an injection of sodium chloride (CPT code J2912) to the Claimant through the same puncture site through which he was given 80 mg of Depo-Medrol during the ESI.
12. The Provider reimbursed the Claimant for the Depo-Medrol injection.
13. The Provider sought reimbursement from the Carrier for the fluoroscopic guidance, epidurogram, surgical gloves, five cc syringe, and injection of sodium chloride.
14. The Carrier sent an explanation of benefit (EOB) to the Provider:
 - reimbursing \$88 for the fluroscopic guidance;
 - denying reimbursement for the epidurogram—contending it was included within the fluroscopic guidance;
 - denying reimbursement for the surgical gloves and five cc syringe—contending they should have been included in the surgical tray for which it reimbursed the Provider; and
 - denying reimbursement for the sodium chloride injection—contending that it had paid for an injection through that same puncture site.
15. On March 4, 2002, the Provider filed a request for medical dispute resolution with the TWCC.
16. MRD denied the Provider's request for additional reimbursement for the above services.

17. The Provider sought a hearing on the above dispute before the State Office of Administrative Hearings (SOAH).
18. Notice of an October 31, 2002 hearing in this case was mailed to the Carrier, the Provider, and the TWCC Staff on October 14, 2002.
19. On October 31, 2002, William G. Newchurch, an Administrative Law Judge (ALJ) with SOAH held a hearing on the case at the William P. Clements Office Building, Fourth Floor, 300 West 15th Street, Austin, Texas. The hearing concluded and the record closed on that same day.
20. The Carrier appeared at the hearing through its attorney, Shannon Butterworth.
21. The Provider appeared at the hearing through its employee, Connie Morgan, by telephone.

VIII. Conclusions of Law

22. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order, pursuant to TEX. LABOR CODE ANN. (Labor Code) §§ 402.073(b) and 413.031(k) (West 2002) and TEX. GOV'T CODE ANN. (Gov't Code) ch. 2003 (West 2001).
23. Adequate and timely notice of the hearing was provided in accordance with Gov't Code §§ 2001.051 and 2001.052.
24. As the party seeking relief, the Provider has the burden of proof in this matter. 28 TEX. ADMIN. CODE (TAC) §148.21(h) (2002).

25. An employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. Labor Code § 408.021 (a).
26. The Commission's Medical Fee Guideline (MFG) sets a the maximum allowable reimbursement (MAR) of \$88 for all types of fluoroscopy (CPT code 76000) with certain exceptions not including fluroscopic guidance. Medical Fee Guideline 1996; adopted by reference at 28 TAC § 134.201(a).
27. The MFG also provides that an "insurance carrier will reimburse the lesser of the billed charge, or the MAR." MFG, General Instructions, VI. Reimbursement.
28. Based on the above Findings of Fact and Conclusions of Law, the Provider was properly reimbursed for the fluoroscopic guidance it provided.
29. Under the Commission's Surgery Ground Rules (SGR), a surgical tray (CPT code A4550) includes all supplies needed to perform the procedure. SGR V.B.1.
30. Based on the above Findings of Fact and Conclusions of Law, the Provider is entitled to no additional reimbursement for the gloves or syringe used to provide the ESI since they should have been included in the surgical tray.
31. The SGR provides, "When introducing additional materials through the same puncture site, reimbursement shall be allowed for the materials only." SGR I.E.4.d.
32. Based on the above Findings of Fact and Conclusions of Law, the Provider is not entitled to be reimbursed for the injection of sodium chloride that was supplied to the Claimant through the same puncture site as the Depo-Medrol.

33. Based on the above Findings of Fact and Conclusions of Law, the Provider's requests for additional reimbursement as discussed above should be denied.

ORDER

IT IS ORDERED THAT the Provider's requests for additional reimbursement as discussed above are denied.

Signed December 9, 2002.

STATE OFFICE OF ADMINISTRATIVE HEARINGS

**WILLIAM G. NEWCHURCH
ADMINISTRATIVE LAW JUDGE**