

**DOCKET NO. 453-03-1908.M2**  
**[MDR TRACKING NO. M2-03-0363-01]**

**AMERICAN HOME ASSURANCE  
COMPANY,**

**PETITIONER**

**V.**

**MICHAEL OLIVA, M.D.,  
RESPONDENT**

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§  
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§  
§

**BEFORE THE STATE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

American Home Assurance Company (“the Carrier”) challenges the decision of an Independent Review Organization (IRO) requiring the Carrier to pay for a single Bretylium Bier Block injection to provide pain relief to the Claimant’s right arm.<sup>1</sup> The Carrier argued that the injection is medically unnecessary. Based on the Respondent’s deemed admission that the requested treatment is medically unnecessary and the Respondent’s failure to participate in the hearing, this decision finds that the requested treatment should not be preauthorized.

**II. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY**

Administrative Law Judge (ALJ) Kerry D. Sullivan convened held the hearing on this matter on March 19, 2003. The Carrier was represented by Dan C. Kelley. The Respondent and the Commission did not appear at the hearing. Notice of the hearing had been properly mailed to the parties on January 30, 2003, and notice of the continuance of the hearing to March 19, 2003 was properly provided on February 28, 2003.

**II. BASIS FOR DECISION**

On \_\_\_\_\_, workers’ compensation claimant \_\_\_\_ (“the Claimant”) suffered a compensable injury to her right arm as a result of an electrical shock. In August 2002, her treating physician, Dr. Michael Oliva, requested preauthorization for a series of three Bretylium Bier block injections to anesthetize the Claimant’s right arm in order to relieve her continuing pain. The Carrier denied this request as medically unnecessary. Dr. Oliva requested medical dispute resolution with the Commission, and the IRO preauthorized a single Bier Block injection as medically necessary.

The Carrier timely requested a hearing on the IRO’s decision. In preparing for the hearing, the Carrier submitted discovery requests to Dr. Oliva on February 5, 2003. These included a

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<sup>1</sup> Michael Oliva, M.D., the Claimant’s treating physician, had requested preauthorization of a series of three bier block injections.

Request for Admission pursuant to 1 TEX. ADMIN. CODE § 155.31(d)(2). This request asked Dr. Oliva to admit that the bretylium bier blocks were not medically necessary. Dr. Oliva failed to respond or object to the request for admission. Accordingly, lack of medical necessity is automatically deemed admitted and conclusively established pursuant to 1 TEX. ADMIN. CODE § 155.31(d)(2).

Based on this deemed admission, the Carrier filed a Motion for Summary Disposition on February 28, 2003. Dr. Oliva provided no response to this motion and, as previously noted, he also failed to appear at the March 19, 2003 hearing.

The ALJ granted the Motion for Summary Disposition at the commencement of the March 19, 2003 hearing. Certainly, the Carrier's request for admission was very broad, and could have potentially been set aside in the interest of justice. But in the absence of a timely motion to withdraw the admission, and in view of Dr. Oliva's lack of participation in the hearing, the admission must stand. Accordingly, the requested preauthorization is denied.

### **III. FINDINGS OF FACT**

1. On \_\_\_\_\_, \_\_\_\_\_. (Claimant) suffered compensable injuries to her right arm as a result of an electrical shock.
2. At the time of Claimant's injury, her employer held workers' compensation insurance coverage through American Home Assurance Company ("the Carrier").
3. Claimant's treating physician, Michael Oliva, M.D., seeks preauthorization for a series of three Bretylium Bier Block injections to provide pain relief to the Claimant's right arm.
4. The Carrier denied the request for preauthorization.
5. Dr. Oliva requested MDR at the Texas Workers' Compensation Commission, which referred the matter to an Independent Review Organization (IRO).
6. The IRO found that one Bretylium Bier Block injection was shown to be medically necessary.
7. The Carrier timely requested a hearing before the State Office of Administrative Hearings (SOAH).

8. The Carrier submitted discovery requests to Dr. Oliva on February 5, 2003, including a Request for Admission, pursuant to 1 TEX. ADMIN. CODE § 155.31(d)(2). This request asked Dr. Oliva to admit that the bretylium bier blocks were not medically necessary.
9. Dr. Oliva failed to respond or object to the request for admission.
10. On February 28, 2003, the Carrier filed a motion for summary disposition, relying on Dr. Oliva's failure to respond to its Request for Admission.
11. Dr. Oliva did not respond to the motion for summary disposition and did not request permission to withdraw the deemed admission that Bretylium Bier Block injections are not medically necessary.
12. Notice of the SOAH hearing was sent to the parties on January 30, 2003. The notice informed the parties of the date, time, and location of the hearing, a statement of the matters to be considered, the legal authority under which the hearing would be held, and the statutory provisions applicable to the matters to be considered.
13. By Order dated February 25, 2003, the parties were notified that the hearing was continued to March 19, 2003.
14. The SOAH hearing convened and closed on March 19, 2003.
15. Dr. Oliva did not appear at the hearing.
16. The Carrier's motion for summary disposition was granted at the commencement of the March 19, 2003 hearing.

#### **IV. CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over this matter pursuant to Section 413.031 of the Texas Workers' Compensation Act (the Act), TEX. LAB. CODE ANN. ch. 401 et seq.
2. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. § 413.031(d) and TEX. GOV'T CODE ANN. ch. 2003.
3. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§2001.051 and 2001.052.
4. As Petitioner, the Carrier has the burden of proof in this matter. 28 TEX. ADMIN. CODE §148.21(h).

5. Based on Dr. Oliva's deemed admission, it is conclusively established that the requested medical services are not medically necessary. 1 TEX. ADMIN. CODE § 155.31(d)(2).
6. The requested preauthorization of Bretylium Bier Block injections should be denied.

**ORDER**

**IT IS ORDERED** that the request submitted by Michael Oliva, M.D., for preauthorization of Bretylium Bier Block injections for workers' compensation claimant \_\_\_\_\_ is denied.

**Signed this 17<sup>th</sup> day of April, 2003.**

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**KERRY D. SULLIVAN**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**